

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

ORIGINAL

75-7056

United States Court of Appeals

For the Second Circuit.



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee,

Against-

SAMUEL H. SLOAN, individually and d/b/a SAMUEL H.
SLOAN & COMPANY,

Defendants-Appellants.

*On Appeal From The United States District
Court For The Southern District Of New York*

Appellants' Appendix

SAMUEL H. SLOAN
Defendant, pro se
917 Trents Ferry Road
Lynchburg, Va. 24503
(804) 384-1207

85

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Certified copy of docket entries	1
Complaint	4
Affidavit of notice of Jerome M. Selvers	10
Order to show cause and temporary restraining order and supporting affidavits	11
Affidavit of service	29
Order extending temporary restraining order	30
Affidavit in support of extension of temporary restraining order	32
Order of injunction	36
Notice of appeal	48
Transcript of Proceedings 12-30-74	49
Transcript of Proceedings 1-17-75	91

Demand date:

1-21-75 ATTORNEYS

TITLE OF CASE

SECURITIES AND EXCHANGE COMMISSION

VS.

SAMUEL H. SLOAN, Individually and
d/b/a SAMUEL H. SLOAN & CO.

For plaintiff:

William D. Moran, Regional Administrator
26 Federal Plaza, NYC 10007 264 1636

For defendant:

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
mailed <input checked="" type="checkbox"/>	Clerk		ASA		
on a/c at: <input checked="" type="checkbox"/>	Marshal				
of Action SEC Act of 1934 SC 780(c)(2) & 15 USC 21(e) ruled 17 CFR 240.15c & Sec 21(e) of 15 USC 78u(c)	Docket fee Witness fees Depositions				



74 CL 5729

Date Order
Judgment D.

DATE	PROCEEDINGS
30.74	Filed Complaint & issued summons.
31.74	Filed Order to Show Cause & temporary restraining order. Ordered that A. F. Griesa, their agents, servants, etc., are ordered restrained as indicated. ret. 1/6/75 Ward J. (mailed notice)
31.74	Filed Affidavit of Notice by Jerome M. Selvers on 12/30/74.
31.74	Filed Memorandum of Law in support of Pltffs. motion for temporary restraining order & preliminary injunction.
9.75	Filed Order that the Temporary Restraining Order issued by this court on 12/30/74 and ret. on 1/3/75 be extended to 1/17/75. Griesa J. (mailed notice)
9.75	Filed Affidavit in support of extension of Temporary restraining order by Jerome M. Selvers.
11.8.75	Filed Affidavit by Carmine L. Assetta of service of Order to Show Cause, Temp. Restraining Order & Affidavits on 12/31/74.
20.75	Filed Order of Injunction. Ordered that Samuel H. Sloan & Samuel H. Sloan & Co., their agents, etc., are hereby Ordered to permit immediate examination of books & records as indicated & enjoined from further violations of the examination as indicated. Ordered not to remove, destroy or alter the books & records as indicated. Enjoined from further violation of the provisions for initiating over the counter quotations as indicated. Etc. Ward J. (mailed notice) Judgment Entered 1-20/75. Clerk, Entered 1-21-75.
16.75	Filed Summons and proof of service on 12/30/74 by Samuel H. Sloan.
21.75	Filed Dfta. Notice of Appeal from order of injunction entered 1/20/75. (mailed notice)

31/75 Transcript attd 12-30-75

A TRUE COPY
RAYMOND F. BURGESS
Clerk

AC Thompson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S.C.A. NO. 25-7056

*SEE
no
S. Sloan*

CASE NO. 24C-5720
JUDGE E. J. H.

EXTRACT OF DOCKET ENTRIES

DATE

PROCEEDINGS

2-10-75 Filed transcript of Jan 17, 75

Reu Thompson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE WARD

74 Civ. 329

SECURITIES AND EXCHANGE COMMISSION :
Plaintiff, : 74 Civil Action
File No.
-against- :
SAMUEL H. SLOAN, Individually and : COMPLAINT
d/b/a SAMUEL H. SLOAN & CO.
Defendants.
:

Plaintiff, Securities and Exchange Commission ("Commission"), for its complaint herein alleges as follows:

1. Defendants Samuel H. Sloan ("Sloan") individually and doing business as Samuel H. Sloan & Co. ("Sloan & Co.") have engaged, are engaged and are about to engage in acts and practices which constitute and will constitute violations of Sections 15(c)(2), and 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"), as amended, 15 U.S.C. 78o(c)(2) and 15 U.S.C. 78q(a) and Rules 17 CFR 240.15c2-11 ("Initiating Quotations in Over-the-Counter Securities"), 17 CFR 240.17a-4 ("Examination and Visitation Provisions").

2. The Commission brings this action pursuant to authority conferred by Section 21(e) of the Exchange Act, 15 U.S.C. 78u(e).

3. This Court has jurisdiction under Section 27 of the Exchange Act, 15 U.S.C. 78aa.

4. The Commission, pursuant to the authority contained in Sections 15(c), 17(a) and 23(a) of the Exchange Act, 15 U.S.C. 78o(c), 15 U.S.C. 78q(a) and 15 U.S.C. 78w(a), has prescribed Rules 17 CFR 240.15c2-11, 17 CFR 240.17a-4 which are now and at all times herein relevant, were in effect.

5. Defendant Sloan & Co. is a sole proprietorship which maintains its principal place of business at 120 Liberty Street, New York, New York.

6. Defendant Sloan & Co. is registered with the Commission pursuant to the provisions of Section 15(b) of the Exchange Act, 15 U.S.C. 78o(b) as a broker and dealer in securities and has been so registered since May 10, 1970.

7. Defendant Sloan is and at all times herein relevant was the sole proprietor and manager of Sloan & Co. He resides at 1761 Eastburn Avenue, Bronx, New York.

FIRST CAUSE OF ACTION

(Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17a-4 thereunder, 17 CFR 240.17a-4 ("Examination and Visitation Provisions))

8. The Commission realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 7 hereof.

9. During the period from May 10, 1970, to the date hereof, the defendant Sloan & Co. has been and is now a broker and dealer in securities, engaged in the business of effecting transactions for the accounts of others and for its own account

and during the period has been and is now making use of the mails and means and instrumentalities of interstate commerce to effect transactions in and to induce the purchase and sale of securities (other than an exempted security or commercial paper, bankers' acceptances or commercial bills) otherwise than on a national securities exchange in the Southern District of New York and elsewhere.

10. During the period from on or about December 26, 1974, to the date hereof, defendants Sloan and Sloan & Co. have violated Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17 CFR 240.17a-4 in that said defendants have refused to produce for examination and maintain in an easily accessible place their books and records.

SECOND CAUSE OF ACTION

(Section 15(c)(2) of the Exchange Act, 15 U.S.C. 78o(c)(2) and Rule 15c2-11 thereunder, 17 CFR 240.15c2-11 ("Provision for Initiating Over-the-Counter Quotations"))

11. The Commission realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 10 hereof.

12. During the period from on or about December 23, 1974, to the date hereof, defendants Sloan and Sloan & Co. have violated Section 15(c)(2) of the Exchange Act, 15 U.S.C. 78o(c)(2) and Rule 17 CFR 240.15c2-11, thereunder, in that said defendants have submitted for publication and have caused the publication of quotations in a quotation medium for over-the-counter securities while and at a time said defendants failed to possess,

maintain, preserve or make reasonably available upon request to any person expressing an interest in a proposed transaction in the security being quoted, and/or member of the plaintiff Commission's staff those items of information required to be in the possession of a broker-dealer before a broker-dealer may lawfully publish any such quotation as required by Rule 17 CFR 240.15c2-11 (a)(4) and (c).

REQUEST FOR RELIEF

13. The Commission repeats and realleges by reference each and every allegation set forth in paragraphs 1 through 12 hereof.

14. By reason of defendants Sloan and Sloan & Co.'s disregard of Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17a-4, 17 CFR 240.17a-4 promulgated thereunder, which requires that registered brokers and dealers produce for examination and maintain in an easily accessible place their books and records, the Commission cannot determine whether Sloan is in compliance with various sections and rules of the federal securities laws as well as an Order of Permanent Injunction issued in January 1974, against the defendants.

15. By reason of defendants Sloan and Sloan & Co.'s violation of Section 15(c)(2) and Rule 15c2-11 thereunder, 17 CFR 240.15c2-11, which requires that registered brokers and dealers possess, furnish, maintain, preserve certain information prior to submitting for publication quotations in a quotation media for certain over-the-counter securities, they have created a market in securities without adequate and current information.

WHEREFORE, plaintiff respectfully demands:

I. That a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction be entered by the Court restraining and enjoining Sloan and Sloan & Co., their agents, servants, employees, attorneys, successors and assigns, and those persons in active concert or participation with them (or any member or dealer registered with the Commission of which defendant Sloan may become a principal or controlling person):

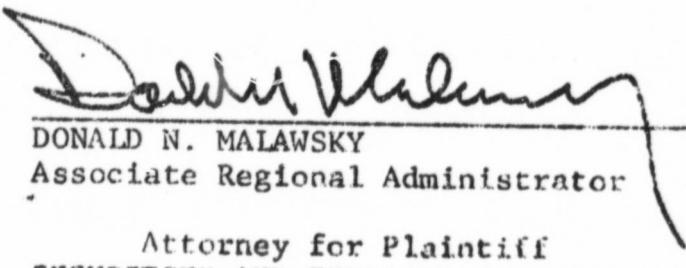
1. From further violations of the examination provisions of Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17a-4 promulgated thereunder, 17 CFR 240.17a-4;
2. From removing, destroying or altering the books and records of Sloan and Sloan & Co. required to be made, maintained and preserved pursuant to Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rules 17a-3 and 17a-4 promulgated thereunder, 17 CFR 240.17a-3 and 17a-4.

II. That a Mandatory Order be issued by the Court to permit immediate examination in an easily accessible place by examiners and other representatives of the Commission of the books and records of Sloan and Sloan & Co. (or any other broker or dealer registered with the Commission of which defendant Sloan may become a principal or controlling person) as required by Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17a-4 promulgated thereunder, 17 CFR 240.17a-4.

III. That a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction be entered by the Court restraining and enjoining defendants Sloan and Sloan & Co., their agents, servants, employees, attorneys, successors and assigns, and those persons in active concert or participation with them (or any member or dealer registered with the Commission of which defendant Sloan may become a principal or controlling person), while and at a time said defendants failed to possess, maintain, preserve or make reasonably available upon request to any person expressing an interest in a proposed transaction in the security being quoted, and/or member of the plaintiff Commission's staff those items of information required to be in the possession of a broker-dealer before a broker-dealer may lawfully publish any such quotation as required by Rule 17 CFR 240.15c2-11 (a)(4) and (c).

IV. Such other and further relief as this Court may deem necessary and proper.

Respectfully submitted,



DONALD N. MALAWSKY

Associate Regional Administrator

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
26 Federal Plaza
New York, New York 10007
Telephone No.: (212) 264-1634

Of Counsel:

William Nortman
Thomas R. Beirne
Jerome M. Selvers

Dated: New York, New York
December 30, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN, Individually and d/b/a
SAMUEL H. SLOAN & CO.

74 Civil 5729 (RJW)

AFFIDAVIT OF NOTICE

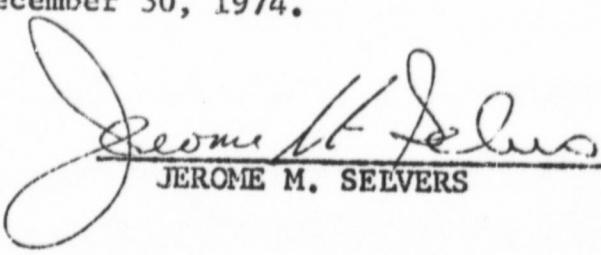
Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

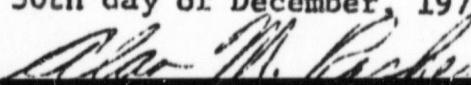
JEROME M. SELVERS, being duly sworn, deposes and says:

1. I am an attorney employed in the New York Regional Office by the Plaintiff, Securities and Exchange Commission ("Commission").

2. At approximately 3:10 p.m. on Monday, December 30, 1974 I called defendant Samuel H. Sloan, at telephone number 583-8565 and advised him that an action had been filed by the Commission and that in connection therewith, an application was being presented to Judge Ward for a temporary restraining order brought on by an Order to Show Cause. I further advised Mr. Sloan that said application would be heard by Judge Ward in his chambers in Room 511 at 3:45 p.m. on December 30, 1974.


JEROME M. SELVERS

Sworn to before me this
30th day of December, 1974.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

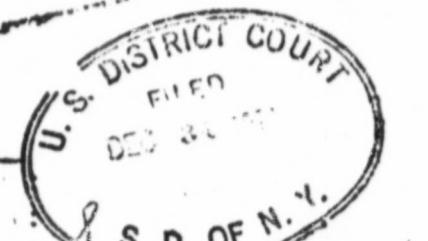
SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN, Individually and d/b/a
SAMUEL H. SLOAN & CO.

Defendants.



74 Civil Action
File No. 5129 (RJD)

ORDER TO SHOW CAUSE AND
TEMPORARY RESTRAINING
ORDER

On the motion of the Plaintiff, Securities and Exchange Commission ("Commission"), and upon the Complaint in this action and the Affidavits of Thomas F. Dolan and Ira B. Spindler annexed hereto, and it appearing that the defendants Samuel H. Sloan ("Sloan"), individually and doing business as Samuel H. Sloan & Co. ("Sloan & Co."), pending final determination of the action, will, unless restrained, continue to engage in acts and practices which constitute violations of Sections 15(c)(2) and 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"), as amended, 15 U.S.C. 78q(a) and Rules 15c2-11 and 17a-4 promulgated thereunder, 17 C.F.R. 240.15c2-11 and 240.17a-4 and that immediate and irreparable injury, loss and damage will result to members of the investing public and others, it is hereby

ORDERED, that the defendants Sloan and Sloan & Co. show cause, if any there be, before Judge ROBERT J. WARD on JANUARY 8, 1976 at 2:30 p.m. in Room 519 of the United States Courthouse, Foley Square, New York, New York, or as soon thereafter

as the matter can be heard, why a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure should not be granted as requested by the plaintiff Commission.

AND IT IS FURTHER ORDERED that pending determination of this motion for a preliminary injunction, Sloan and Sloan & Co., their agents, servants, employees, attorneys, successors and assigns, and those persons in active concert or participation with them (or any member or dealer registered with the Commission of which defendant Sloan may become a principal or controlling person), be and they hereby are:

- (a) Ordered to permit immediate examination in an easily accessible place by examiners and other representatives of the Commission of the books and records of Sloan and Sloan & Co. (or any other broker or dealer registered with the Commission of which Sloan may become a principal or controlling person) as required by Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17a-4 promulgated thereunder, 17 C.F.R. 240.17a-4;
- (b) Restrained from further violations of the examination provisions of Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17a-4 promulgated thereunder, 17 C.F.R. 240.17a-4; and
- (c) Ordered not to remove, destroy or alter the books and records of Sloan and Sloan & Co. required to be made,

maintained and preserved pursuant to Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rules 17a-3 and 17a-4 promulgated thereunder, 17 C.F.R. 240.17a-3 and 17a-4.

AND IT IS FURTHER ORDERED that pending determination of this motion for a preliminary injunction, Sloan and Sloan & Co., their agents, servants, employees, attorneys, successors and assigns, and those persons in active concert or participation with them (or any member or dealer registered with the Commission of which defendant Sloan may become a principal or controlling person) be and they are hereby restrained from further violations of the provisions for initiating over-the-counter quotations of Section 15(c)(2) of the Exchange Act, 15 U.S.C. 78o(c)(2) and Rule 15c2-11 promulgated thereunder, 17 C.F.R. 240.15c2-11, (a full copy of the Rule is attached hereto and made a part of this temporary restraining order), while and at a time said defendants failed to possess, maintain, preserve or make reasonably available upon request to any person expressing an interest in a proposed transaction in the security being quoted, and/or member of the plaintiff Commission's staff those items of information required to be in the possession of a broker-dealer before a broker-dealer may lawfully publish any such quotation as required by Rule CFR 240.15c2-11(a)(4) and (c).

IT IS FURTHER ORDERED that personal service of the within Order shall be effected upon the defendants Sloan and Sloan & Co. by 6:30 p.m December 30, 1974.

R.W.
S

Service of this Order, Summons, Complaint and Supporting
Affidavits may be made by representatives of plaintiff Commission.



UNITED STATES DISTRICT JUDGE

✓ Dated: New York, New York
December 30, 1974
at 5:55 p.m.

Securities Exchanges

or located in a different city or state.

Stat. 66, as amended; 15 U.S.C. § 77g. (Aug. 12, 1964)

120.15c2-11 Delivery of prospectus.

shall constitute a deceptive practice, as those terms are used pursuant to section 15(c) of the Act, for a broker or dealer to participate in a distribution of securities with respect to which a registration statement has been filed under the Act of 1933 unless he complies with the requirements set forth in section 120.15c2-11 of this part. In the purpose of this section, a dealer participating in the distribution shall mean a member or proposed member of a group.

A broker or dealer shall take reasonable steps to furnish to any person who makes a written request for any person of the final prospectus relating to securities during the period from the effective date of the registration statement to the later of the date of distribution of such distribution, or 40 days of the time (rule 40-1 under section 173) of the Act of 1933. The broker or dealer shall furnish the requested prospectus to the underwriter or distributor such copy to the address so requested. The 40-day period above shall be deemed to apply to the purposes of this rule irrespective of the provisions of paragraph (b) of this chapter.

A broker or dealer shall take reasonable steps (1) to make available the preliminary prospectus relating to securities to each of his persons who is expected, after the effective date, to solicit customers for such securities before the making of such solicitation by such person, and (2) to make available such associated person

Chapter II—Securities and Exchange Commission 240.15c2-11

a copy of any amended preliminary prospectus promptly after the filing thereof.

(a) Such broker or dealer shall take reasonable steps to make available a copy of the final prospectus relating to such securities to each of his associated persons who is expected, after the effective date, to solicit customers for such securities prior to the making of any such solicitation by such associated persons, unless a preliminary prospectus which is substantially the same as the final prospectus except for matters relating to the price of the stocks, has been made available.

(b) If the broker or dealer is a managing underwriter of such distribution, he shall take reasonable steps to see to it that all other brokers or dealers participating in such distribution are promptly furnished with sufficient copies, as requested by them, of each preliminary prospectus, each amended preliminary prospectus and the final prospectus to enable them to comply with paragraphs (b), (c), (d), and (e) of this section.

(c) If the broker or dealer is a managing underwriter of such distribution, he shall take reasonable steps to see that any broker or dealer participating in the distribution or trading in the registered security is furnished reasonable quantities of the final prospectus relating to such securities, as requested by him, in order to enable him to comply with the prospectus delivery requirements of section 5(b) (1) and (2) of the Securities Act of 1933.

(d) This section shall not require the furnishing of prospectuses in any state where such furnishing would be unlawful under the laws of such state. *Provided, however,* That this provision is not to be construed to relieve a broker or dealer from complying with the requirements of section 5(b) (1) and (2) of the Securities Act of 1933.

(15 U.S.C. 780(c)(2)) (15 F.R. 18457, Dec. 4, 1970)

240.15c2-11 Initiation or resumption of quotations without specific information.

(a) It shall be a fraudulent, manipulative, and deceptive practice within the meaning of section 15(c)(2) of the Act for a broker or dealer to publish any quotation for a security or, directly or indirectly, to submit any such quotation for publication, in any quotation medium (as defined in this section) unless:

(1) The issuer has filed a registration statement under the Securities Act of 1933 which became effective less than 90 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium; *Provided,* That such registration statement has not thereafter been the subject of a stop order which is still in effect when the quotation is published or submitted, and such broker or dealer has in his records a copy of the prospectus specified by section 10(e) of the Securities Act of 1933; or

(2) The issuer has filed a notification under Regulation A under the Securities Act of 1933 which became effective less than 40 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium; *Provided,* That the offering circular provided for under Regulation A has not thereafter become the subject of a suspension order which is still in effect when the quotation is published or submitted, and such broker or dealer has in his records a copy of such offering circular; or

(3) (i) The issuer is required to file reports pursuant to section 13 or 15(d) of the Act, or is the issuer of a security covered by section 12(g)(3), (13) or (G) of the Act, and

(ii) The broker or dealer has a reasonable basis for believing that the issuer is current in making the reports required to be filed at regular intervals pursuant to section 13 or 15(d) of the Act, or, in the case of insurance companies exempted from section 12(g)(3) of the Act by section 12(g)(3)-(G) thereof, the annual statement referred to in section 12(g)(3)-(G) of the Act; and

(iii) The broker or dealer has in his records the issuer's most recent annual report filed pursuant to section 13 or 15(d) of the Act, or the annual statement in the case of an insurance company not subject to section 12(g)(3) of the Act, together with any other reports required to be filed at regular intervals under such provisions of the Act which have been filed by the issuer after such annual report or annual statement; or

(4) Such broker or dealer has in his records, and shall make reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker or dealer the following information which shall be reasonably current in relation to the day the quotation is initiated: (a) such

he has no reasonable basis for believing is not true and correct or reasonably current, and which was obtained by him from sources which he has a reasonable basis for believing are reliable: (i) The exact name of the issuer and its predecessor (if any); (ii) the address of its principal executive offices; (iii) the state of incorporation, if it is a corporation; (iv) the exact title and class of the security; (v) the par or stated value of the security; (vi) the number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year; (vii) the name and address of the transfer agent; (viii) the nature of the issuer's business; (ix) the nature of products or services offered; (x) the nature and extent of the issuer's facilities; (xi) the name of the chief executive officer and members of the board of directors; (xii) the issuer's most recent balance sheet and profit and loss and retained earnings statements; (xiii) similar financial information for such part of the 2 preceding fiscal years as the issuer or its predecessor has been in existence; (xiv) whether the broker or dealer or any associated person is affiliated, directly or indirectly with the issuer; (xv) whether the quotation is being published or submitted on behalf of any other broker or dealer, and, if so, the name of such broker or dealer; and (xvi) whether the quotation is being submitted or published directly or indirectly on behalf of the issuer, or any director, officer or any person, directly or indirectly the beneficial owner of more than 10 percent of the outstanding units or shares of any equity security of the issuer, and, if so, the name of such person, and the basis for any exemption under the federal securities laws for any sales of such securities on behalf of such person. If such information is made available to others upon request pursuant to this subparagraph, such delivery, unless otherwise represented, shall not constitute a representation by such broker or dealer that such information is true and correct, but shall constitute a representation by such broker or dealer that the information is reasonably current in relation to the day the quotation is submitted, that he has no reasonable basis for believing the information is not true and correct, and that the information was obtained from sources which he has a reasonable basis for believing are reliable.

(b) With respect to any security the quotation of which is within the provisions of this section, the broker or dealer submitting or publishing such quotation shall maintain in his records information regarding all circumstances involved in the submission or publication of such quotation, including the identity of the person or persons for whom the quotation is being submitted or published and any information regarding the transaction provided to the broker or dealer by such person or persons.

(c) The broker or dealer shall maintain in writing as part of his records the information described in paragraphs (a) and (b) of this section, and any other information (including adverse information) regarding the issuer which comes to his knowledge or possession before the publication of submission of the quotation, and preserve such records for the periods specified in § 240.17a-4.

(d) For any security of an issuer included in paragraph (a)(4) of this section, the broker or dealer submitting the quotation shall furnish to the interdealer quotation system (as defined in paragraph (e)(1) of this section), in such form as such system shall prescribe, at least 2 days before the quotation is published or submitted, the information regarding the security and the issuer which such broker or dealer is required to maintain pursuant to said paragraph (a)(4) of this section.

(e) For purposes of this section:

(1) "Quotation medium" and "any "interdealer quotation system" or "any publication or electronic communications network or other device which is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of others to buy or sell."

(2) "Interdealer quotation system" shall mean any system of general circulation to brokers or dealers which regularly disseminates quotations of affiliated brokers or dealers.

(3) Except as otherwise specified in this section, "quotation" shall mean an offer to buy or offer at a specified price with respect to a security.

(4) The provisions of this section shall not apply to:

(i) The publication or submission of a quotation respecting a security admitted to trading on a national securities exchange and which is traded on such exchange on the same day as, or as

With respect to any security transaction of which is within the purview of this section, the broker or dealer may publishing such quotation maintain in his records information, according all circumstances, in the submission or publication of quotation, including the identity person or persons for whom it is being submitted or put and any information regarding transaction provided to the broker or such person or persons.

The broker or dealer shall maintain as part of his records information described in paragraphs (1) of this section, and any other information including adverse information regarding the issuer which came into his knowledge or possession before date of submission of the quotation and preserve such records for as specified in § 210.17a-4, or any security of an issuer in a paragraph (a)(4) of this section, broker or dealer submitting the quotation shall furnish to the interdealer quotation system (as defined in (c)(1) of this section), as such system shall prescribe, 2 days before the quotation is to be submitted, the information on the security and the issuer which broker or dealer is required to furnish pursuant to said paragraph of this section.

For purposes of this section: "quotation medium" shall mean "interdealer quotation system" or "cable or electronic communication" or other device which brokers or dealers to make known their interest in transaction security, including offers to buy or stated price or otherwise, or of offers to buy or sell, interdealer quotation system in any system of general clearing brokers or dealers which transmits quotations of identified brokers or dealers.

Not otherwise specified in "quotation" shall mean an offer to buy or sell at a specified price "at the quotation."

For purposes of this section, "transaction" shall mean the offer or submission of a quotation or otherwise effecting a security administered by a national securities exchange which is traded on such day as, or on the

business day next preceding, the day the quotation is published or submitted.

(2) The publication or submission of a quotation for securities of foreign issuers exempt from section 12(g) of the Act by reason of compliance with the provisions of § 240.12g3-2(b).

(3) The publication or submission of a quotation respecting a security which has been the subject of both bid and ask quotations in an inter-dealer quotation system at specified prices on each of at least 12 days within the previous 30 calendar days, with no more than 4 business days in succession without such a two-way quotation.

(4) The requirement in paragraph (a) (4) of this section that the information with respect to the issuer be "reasonably current" will be presumed to be satisfied, unless the broker or dealer has information to the contrary, if:

(1) The balance sheet is as of a date less than 16 months before the publication or submission of the quotation, the statements of profit and loss and retained earnings are for the 12 months preceding the date of such balance sheet, and if such balance sheet is not as of a date less than 6 months before the publication or submission of the quotation, it shall be accompanied by additional statements of profit and loss and retained earnings for the period from the date of such balance sheet to a date less than 6 months before the publication or submission of the quotation.

(2) Other information regarding the issuer specified in paragraph (a)(4) of this section is as of a date within 12 months prior to the publication or submission of the quotation.

(h) This section shall not prohibit any publication or submission of any quotation if the Commission, upon written request or upon its own motion, exempts such quotation either unconditionally or on specified terms and conditions, as not constituting a fraudulent, manipulative or deceptive practice comprehended within the purpose of this section.

[30 FR. 18041, Sept. 13, 1971]

§ 210.15c3-1. Net capital requirements for brokers and dealers.

(i) No broker or dealer shall permit his aggregate indebtedness to all other persons to exceed 2,000 per centum of his net capital, and every broker or dealer shall have the net capital necessary to comply with the following conditions:

(1) If he becomes registered as a broker or dealer on and after August 13, 1971, his aggregate indebtedness to all other persons on and after August 30, 1972, and for 12 months after becoming registered shall not exceed 300 per centum of his net capital, and except as provided for in subparagraphs (3) and (4) of this paragraph, he shall have and maintain net capital of not less than \$25,000; and

(2) If he became registered as a broker or dealer before August 13, 1971, and he does not come within the provisions of subparagraph (3) or (4) of this paragraph, he shall have and maintain net capital of not less than \$15,000 commencing July 31, 1973, and \$25,000 commencing July 31, 1974;

(3) Notwithstanding the provisions of subparagraphs (1) and (2) of this paragraph, if he promptly transmits all funds and delivers all securities received in connection with his activities as a broker or dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers, he shall have and maintain net capital of not less than \$5,000 if he does not otherwise carry accounts of or for customers; and

(4) The minimum net capital to be maintained by a broker or dealer meeting all of the following conditions shall be \$2,500:

(i) His dealer transactions (as principal for his own account) are limited to the purchase, sale and redemption of redeemable shares of registered investment companies; except that a broker or dealer transacting business as a sole proprietor may also effect occasional transactions in other securities for his own account with or through another registered broker-dealer;

(ii) His transactions as broker (agent) are limited to: (a) The sale and redemption of redeemable securities of registered investment companies; (b) the solicitation of share accounts for savings and loan associations situated in an instrumentality of the United States; and (c) the sale of securities for the account of a customer to obtain funds for immediate repayment in redeemable securities of registered investment companies; and

(iii) He promptly transmits all funds and delivers all securities received in connection with his activities as a broker or dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.

430

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION : 74 Civil Action
Plaintiff, : File No.
- against - : AFFIDAVIT IN SUPPORT
SAMUEL H. SLOAN, Individually and d/b/a : OF PLAINTIFF'S MOTION
SAMUEL H. SLOAN & CO. : FOR A TEMPORARY RE-
Defendants. : STRAINING ORDER AND
PRELIMINARY INJUNCTION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

THOMAS F. DOLAN, being duly sworn, deposes and says:

1. I am employed by the United States Securities and Exchange Commission ("Commission"), plaintiff in the above entitled action, in its New York Regional Office as a Securities Compliance Examiner.

2. I make this affidavit in support of the application of the Commission for an Order to Show Cause, Temporary Restraining Order and Motion for Preliminary Injunction against Samuel H. Sloan ("Sloan"), individually and doing business as Samuel H. Sloan & Co., ("Sloan & Co.").

3. This affidavit is based upon correspondence and other documents of defendant Sloan & Co., statements made to or in my presence by Sloan, information received from the NQB, information contained in the official files of the Commission and upon

information and belief.

4. Defendant Sloan & Co., a sole proprietorship, has its principal place of business at 120 Liberty Street, New York, N.Y.; however, maintains its books and records at 1761 Eastburn Avenue in the Bronx, N.Y. Defendant Sloan & Co. is registered with the Commission pursuant to the provisions of Section 15(b) of the Exchange Act, 15 U.S.C. 78o(b), as a broker and dealer in securities and has been so registered since May 10, 1970. *

5. Defendant Sloan resides at 1761 Eastburn Avenue, Bronx, New York, and at all times relevant hereto, is and has been sole proprietor and manager of defendant Sloan & Co.

6. Sloan was advised both by letter and telephone that members of the staff would examine his books and records on Thursday, December 26, 1974.

VIOLATIONS OF SECTION 17(a)
OF THE EXCHANGE ACT, 15 U.S.C.
78q(a) AND RULE 17a-4 THERE-
UNDER, 17 CFR 240.
17a-4 (EXAMINATION AND VISITA-
TION PROVISIONS)

7. On December 26, 1974 I was instructed to make a examination of the books and records of defendant Sloan & Co. at 1761 Eastburn Avenue, Bronx, N.Y. I was accompanied by Mr. Ira Spindler ("Spindler"). However, after informing Sloan that we were to examine his books and records, Sloan refused to produce the same. I advised Sloan that he was required to maintain his books and records in an easily accessible place as well as re-

----- to make them available for examination by members of the staff of the Commission. Moreover, I personally gave Sloan a copy of Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4 promulgated thereunder. However, Sloan remained adamant in his refusal to allow us to examine his books and records.

8. Sloan informed us that his books and records were easily accessible to him but not to the Commission.

9. I asked Sloan if he was aware of the fact that he was personally enjoined by an Order of this Court for future violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 promulgated thereunder. He replied that he was aware of the injunction but felt that his conduct was not violative of the same.

10. I asked Sloan if it was his intention to refuse examination of his books and records both at 120 Liberty Street and at Lynchburg, Virginia. He advised me that no books and records were maintained at 120 Liberty Street but that he would not allow an examination of his books and records in Lynchburg, Virginia.

NEED FOR RELIEF

11. Defendant Sloan & Co., is in violation of the bookkeeping provisions of the Exchange Act. By virtue of the fact that Sloan has refused to allow an examination of his books and records, it is impossible to determine whether the firm was in compliance with various other provisions of the federal securities laws,

12. For the reasons stated above, a clear and specific showing has been made as required by Rule 9(c)(4) of the General Rules of this Court that it is necessary for the Commission to proceed by Order to Show Cause rather than by Notice of Motion, to seek a Temporary Restraining Order and Preliminary Injunction restraining and enjoining the defendants from further violations of the Exchange Act as alleged in the Complaint filed herein.

13. No previous request of this relief has been made to this Court or any Judge thereof, based on the facts complained of herein.

Thomas F. Dolan

THOMAS F. DOLAN

Sworn to before me this
30th day of December , 1974

Douglas P. Jacobs

NOTARY PUBLIC

Douglas P. Jacobs
Notary Public, State of New York
No. 7057670

Qualified in Kings County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION	:	74 Civil Action
Plaintiff,	:	File No.
- against -	:	AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR A TEMPORARY RE- STRAINING ORDER AND <u>PRELIMINARY INJUNCTION</u>
SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO.	:	
Defendants.	:	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

IRA B. SPINDLER, being duly sworn, deposes and says:

1. I am employed by the United States Securities and Exchange Commission ("Commission"), plaintiff in the above entitled action, in its New York Regional Office as a Financial Analyst, in the Branch of Market Surveillance. Part of my duties include reviewing the listing applications submitted to the National Quotations Bureau ("NQB"), to determine compliance with Rule 15c-2-11.

2. I make this affidavit in support of the application of the Commission for an Order to Show Cause, Temporary Restraining Order and Motion for Preliminary Injunction against Samuel H. Sloan ("Sloan"), individually and doing business as Samuel H. Sloan & Co., ("Sloan & Co.").

3. This affidavit is based upon correspondence and other documents of defendant Sloan & Co., statements made to or in my presence by Sloan, information received from the NQB, information contained in the official files of the Commission and upon

information and belief.

4. Defendant Sloan & Co., a sole proprietorship, has its principal place of business at 120 Liberty Street, New York, New York; however, maintains its books and records at 1761 Eastburn Avenue in the Bronx, New York. Defendant Sloan & Co. is registered with the Commission pursuant to the provisions of Section 15(b) of the Exchange Act, 15 U.S.C. 78o(b), as a broker and dealer in securities and has been so registered since May 10, 1970.

5. Defendant Sloan resides at 1761 Eastburn Avenue, Bronx, New York, and at all times relevant hereto, is and has been sole proprietor and manager of defendant Sloan & Co.

6. Sloan was advised both by letter and telephone that members of the staff would examine his books and records on Thursday, December 26, 1974.

VIOLATIONS OF SECTION 15(c)(2) OF
THE EXCHANGE ACT, 15 U.S.C. 78o(c)(2)
AND RULE 15c2-11 THEREUNDER, 17 C.F.R.
240.15c2-11 -(PROVISION FOR INITIATING
OVER-THE-COUNTER QUOTATIONS)

7. On December 18, 1974, the NQB, publishers of the Pink Sheets, forwarded to this office applications submitted by Sloan to quote the shares of Franklin New York Corp. ("Franklin") and Triex International Corp. ("Triex"). Each of these issues had been suspended from trading in the over-the-counter market by the Commission. Franklin was suspended for the period May 13, 1974 through October 31, 1974 and Triex for the period December 15, 1972 through December 19, 1973. There apparently is no cur-

rent financial information available for either.

8. Sloan did not provide any financial information with these applications, and, as a result, any quotation published for these issues would not be in compliance with Rule 15c2-11. I telephoned Sloan at approximately 10:30 a.m. on December 18, 1974 and informed him of the above.

9. Sloan stated that it was his intention to willfully violate Rule 15c2-11 with regard to these quotations and that it was his further intention to publish quotations for at least 93 other issues for which current information was not available.

10. As of December 26, 1974, this office had in its possession 293 Form 211s submitted by Sloan. In addition, I have been advised that additional forms are en-route from the NQB. Moreover during the week of December 23, 1974, approximately 176 quotations on the bid side have been published in the Pink Sheets, and that 107 quotations are scheduled for publication on December 30, 1974, 20 are scheduled for December 31, 1974 and 3 are scheduled for January 3, 1975.

11. Although the forms are submitted, they do not contain much of the information which was intended to be provided to protect public investors. For example, Part 2 requires that the broker indicate which exemption from Rule 15c2-11 the broker relies on in submitting his quotation. In all instances, Sloan has indicated "None Of The Above", yet fails to supply the specified information in Part 3. In fact, Sloan's answers

contained in Part 3 are either "Don't Know", "Don't Have", or "No." ^{*/}

12. Although the Rule requires that a broker or dealer keep, with respect to any quotation, which is within the provisions of the Rule, records required of all the circumstances surrounding the quotation, Sloan refused to make his books and records available and is in further violation of the Rule.

13. On Thursday, December 26, 1974 I was instructed to examine Sloan's due diligence files pertaining to the quotation submitted on Form 211 to the NQB. However, when I arrived at 1761 Eastburn Avenue with Thomas F. Dolan, Broker-Dealer Compliance Examiner, Sloan failed to produce his books and records.

14. I have read the affidavit of Thomas F. Dolan and I am in accord with the contents therein.

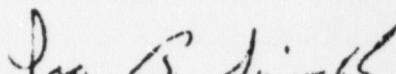
NEED FOR RELIEF

15. Defendant Sloan & Co. and Sloan are and have been in violation of the requirements for initiating over-the-counter quotations of the Exchange Act and Rule promulgated thereunder. Sloan's submission for publication of quotations, for securities

^{*/} Attached hereto is a copy, which will serve as a sample of all the listing applications Sloan has filed.

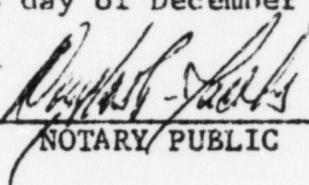
for which he does not possess reasonable information under Rule 15c2-11, places the public in jeopardy. Unless defendant Sloan & Co. and Sloan are enjoined, members of the public may become victims of an unscrupulous scheme.

16. No previous request of this relief has been made to this Court or any Judge thereof.



IRA B. SPINDLER

Sworn to before me this
30th day of December, 1974



DOUGLAS P. JACOBS
Notary Public, State of New York
No. 7057070
Qualified in Kings County
Commission Expires March 30, 1976

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAVID M. BURNETT, being duly sworn, deposes and
says:

1. I am Executive Vice-President of the National Quotation Bureau, Inc. at 116 Nassau Street, New York, New York 10038. The National Quotation Bureau, Inc. publishes the National Daily Quotation Service (the "Pink Sheets"), which is a daily listing of bid and asked prices in securities traded Over-the-Counter by brokerage firms.

2. The National Quotation Bureau has approved the following numbers of Forms 211 submitted by Samuel H. Sloan & Company ("Sloan") for listing in the Pink Sheets. In all cases where a security was not previously listed, copies of completed Forms 211 submitted by Sloan were transmitted to the New York Regional Office of the Securities and Exchange Commission at least 48 hours prior to listing.

(a) On Monday, December 23, 1974, 39 Forms 211 were accepted for listing for inclusion in the Pink Sheets of that date; on Tuesday, December 24, 1974, 31 Forms 211 were approved for listing for inclusion in the Pink Sheets of that date; on Thursday, December 26, 1974, 47 Forms 211 were approved for listing for inclusion in the Pink Sheets of that date; and on Friday, December 27, 1974, 47 Forms 211 were approved for listing for inclusion in the Pink Sheets of that date.

(b) As of December 27, 1974, there were 107 Forms 211 pending for approval for today, December 30, 1974.

(c) As of December 27, 1974, there were 20 Forms 211 which were pending for listing in the Pink Sheets of December 31, 1974; and on December 27, 1974, there were three Forms 211 which were pending for listing in the Pink Sheets of January 2, 1975.

3. Samuel H. Sloan & Company submitted an additional 51 Forms 211 for the listing of securities, which Forms 211 were not sent to the Securities and Exchange Commission since the issues were already listed in Pink Sheets.

4. Samuel H. Sloan & Company appeared in the services of Pink Sheets on the following dates in the following numbers of securities, to wit: On December 23, 1974, Sloan appeared in 77 different issues; on December 24, 1974, Sloan appeared in 39 different issues; on December 26, 1974, Sloan appeared in 60 different issues; and on December 27, 1974, Sloan appeared in 116 different issues.

5. Since December 18, 1974, the National Quotation Bureau has received approximately 350 Forms 211, each for a different security, from Samuel H. Sloan & Company.

David M. Burnett

JOHN M. WALSH
Notary Public, State of New York
No. 41-4501037
Qualified in Queens County
Commission Expires March 30, 1975
Sworn to before me this

30th day of December, 1974

John M. Walsh
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

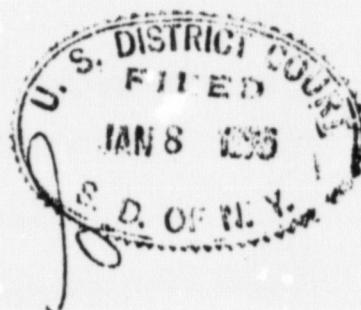
5729
74 Civil ~~5729~~ (RJW)

-against-

SAMUEL H. SLOAN, Individually and d/b/a
SAMUEL H. SLOAN & CO.

Defendants.

AFFIDAVIT



STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

CARMINE L. ASSELTA, being duly sworn, deposes and says:

1. I am over 21 years of age and am employed as an investigator in the New York Regional Office of the Securities and Exchange Commission.

2. On December 31, 1974 at 11:40 a.m. I personally made service of the Order to Show Cause, Temporary Restraining Order and Affidavits upon John Walsh, Vice-President and Treasurer of the National Quotation Bureau, Inc. located on the 10th floor of 116 Nassau Street, New York, New York 10038.

Carmine L. Assetta
CARMINE L. ASSELTA

Sworn to before me this
31st day of December, 1974.

Alan M. Rashi
NOTARY PUBLIC

ALAN M. RASHES
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-8496650
QUALIFIED IN QUEEN COUNTY
COMMERCIAL BANKING MARCH 10, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

74 Civil 5729 (R.W.)

-against-

SAMUEL H. SLOAN, Individually and d/b/a
SAMUEL H. SLOAN & CO.

Defendants.

U.S. DISTRICT COURT
S.D. OF N.Y.
FILED
JAN 9 1975
ORDER EXTENDING
TEMPORARY RESTRAINING
ORDER

A Complaint in this action having been filed on December 30, 1974 and this action having come before the Court, the Hon. Robert J. Ward, District Judge, presiding, and it appearing upon all prior proceedings had herein, the Temporary Restraining Order issued by the Court on December 30, 1974 and the affidavit of Jerome M. Selvers attached hereto, that defendants Samuel H. Sloan ("Sloan"), individually and doing business as Samuel H. Sloan & Co. ("Sloan & Co."), pending determination of the plaintiff Commission's motion for a preliminary injunction will, unless restrained, continue to engage in acts and practices which constitute violations of Sections 15(c)(2) and 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"), as amended, 15 U.S.C. 78c(a) and Rules 15c2-11 and 17a-4 promulgated thereunder, 17 C.F.R. 240.15c2-11 and 240.17a-4, it is hereby

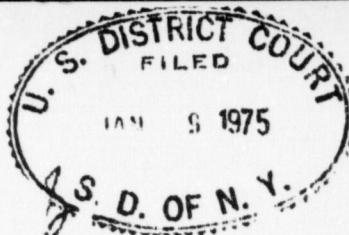
MICROFILM
JAN 9 1975

ORDERED, that the Temporary Restraining Order issued by
this Court on December 30, 1974 and returnable on January 3,
1975 be extended up to and including January 18, 1975.

TPG
Thomas P. Griesa
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
January 8, 1975
Issued at ~~m-~~ 3:10 P.M.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION :
Plaintiff,
- against - :
SAMUEL H. SLOAN, Individually and d/b/a :
SAMUEL H. SLOAN :
Defendants. :

AFFIDAVIT IN SUPPORT
OF EXTENSION OF TEM-
PORARY RESTRAINING
ORDER

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JEROME M. SELVERS, being duly sworn, deposes and says:

1. I am employed as an attorney by the U.S. Securities and Exchange Commission ("Commission"), Plaintiff in the above-entitled action in its New York Regional Office.
2. I make this affidavit in support of the application of the Commission for an extension of the temporary restraining order. This affidavit is based upon correspondence and other documents of defendant Samuel H. Sloan & Co. ("Sloan & Co."), statements made to or in my presence by Samuel H. Sloan ("Sloan"), information received from the National Quotation Bureau ("NQB"), and information contained in the official files of the Commission upon information and belief.
3. On December 30, 1974 the Honorable Robert J. Ward, U.S. District Judge for the Southern District of New York, signed

a temporary restraining order, restraining Sloan & Co. and Sloan from further violations of the examination provisions of Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78q(a) and Rule 17a-4 promulgated thereunder, 17 C.F.R. 240.17a-4 and from further violations of the provisions for initiating over-the-counter quotations, Section 15(c)(2) of the Exchange Act, 15 U.S.C. 78o(c)(2) and Rule 15c2-11, 17 C.F.R. 240.15c2-11.

4. The Court further ordered Sloan to "permit immediate examination in an easily accessible place" of his books and records as well as not to remove, destroy or alter those books and records.

5. Defendants Sloan and Sloan & Co. were ordered to show cause before Judge Ward on January 8, 1975 at 2:15 p.m. in Room 519 of the U.S. Courthouse, Foley Square, New York as Sloan indicated that he was en route to Iceland and would not return until the latest possible date for arguments. Mr. Sloan indicated to the Court that his books and records were in his locked apartment and not in the custody of any person. (Record, p. 25). Moreover, Sloan indicated in response to the Court that there was no one on the premises.

6. The Court suggested that arrangements be made whereby the Commission could inspect Sloan's books and records pursuant to the Court Order. (Record, p. 29, 38). Upon conclusion of argument, Sloan was immediately served with the Temporary Restraining Order, and William Nortman, Assistant Regional Administrator of the New York Regional Office, asked Sloan in

the outer office of Judge Ward's Chambers, if such an examination could be arranged. Sloan flatly refused.

7. On Tuesday, December 31, 1974 I spoke with Mr. Walsh of the NQB who advised me that someone was attempting on Sloan's behalf to list stocks in the Pink Sheets in violation of Rule 15c2-11.

8. I called the telephone number of Sloan's residence (583-8765) which apparently is also an office number, to determine if the firm was doing business. An individual answered the telephone, "Sloan & Co." I advised this individual that the Court had issued a temporary restraining order, restraining Sloan and Sloan & Co. and their agents, employees, servants, assigns, etc. from violating Rule 15c2-11. This individual indicated that he had last spoken to Sloan at approximately 4:30 - 5:00 p.m. the previous day (Monday, December 30, 1974) and Sloan had told him to carry on business as usual.

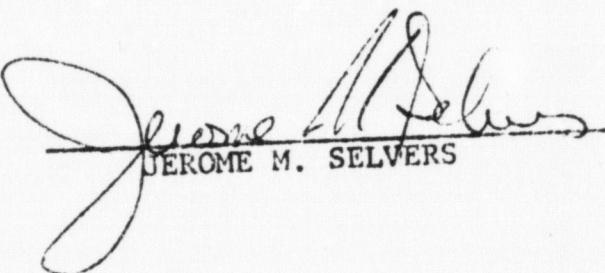
9. I asked this individual if Sloan & Co.'s books and records were available for immediate inspection as ordered by this Court. I was advised that this individual knew nothing of the firm's books and records. Subsequently, Ira B. Spindler, a Financial Analyst in the Branch of Market Surveillance, of the Plaintiff's New York Regional Office, served this individual with a temporary restraining order.

10. On Friday, January 3, 1975 I called Sloan & Co. at 583-8565 and again spoke to this individual who had by this time been identified as Hank Lanson who again answered the telephone

"Sloan & Co."

11. Clearly, Sloan misrepresented the availability of his books and records when he stated that same were in a locked apartment with no one present to allow an inspection. As a result, as of this date, the Commission has been unable to examine Sloan's books and records to determine the extent of the violations.

12. It is therefore imperative at this point that the temporary restraining order be extended for an additional 10 days and that the matter be set down as quickly as possible on the plaintiff's request for a preliminary injunction.



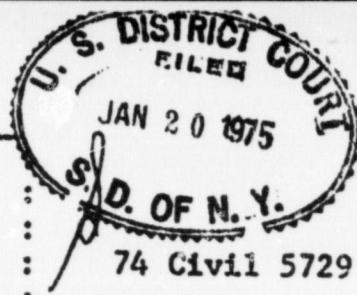
~~Jerome M. Selvers~~
JEROME M. SELVERS

Sworn to before me this
8th day of January, 1975

Henry Wong
NOTARY PUBLIC

HENRY WONG
Notary Public, State of New York
No. 214-1125
Certified No. 33-1875
Commission Expiration Date

ma : mg
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN, Individually and d/b/a
SAMUEL H. SLOAN & CO.

Defendants.

ORDER OF INJUNCTION

This matter having come on for a hearing upon an Order to Show Cause issued on December 30, 1974 by this Court and upon the Complaint in this action and the affidavits of Thomas F. Dolan and Ira B. Spindler in support of the application of the Securities and Exchange Commission for an order to show cause and temporary restraining order, mandatory orders, preliminary and permanent injunctions and after hearing counsel for the Securities and Exchange Commission in support of the motion and defendant Samuel H. Sloan, pro se in opposition thereto, and this Court having signed a Temporary Restraining Order on December 30, 1974 and having extended said Temporary Restraining Order on January 8, 1975 and it appearing that unless the defendant Samuel H. Sloan, individually and doing business as Samuel H. Sloan & Co. are preliminarily enjoined, violations by the defendants of Sections 15(c)(2) and 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"), as amended, 15 U.S.C. 78q(a) and Rules 15c2-11 and 17a-4 promulgated thereunder, 17 C.F.R. 240.15c2-11

MICROFILM

JAN 20 1975

and 240.17a-4 and that immediate and irreparable loss and damage will result to members of the investing public and others, it is hereby

ORDERED, ADJUDGED AND DECREED that Samuel H. Sloan and Samuel H. Sloan & Co., their agents, servants, employees, attorneys, successors and assigns, and those persons in active concert or participation with them (or any member or dealer registered with the Commission of which defendant Samuel H. Sloan may become a principal or controlling person), be and they hereby are:

- (a) Ordered to permit immediate examination in an easily accessible place by examiners and other representatives of the Commission of the books and records of Samuel H. Sloan and Samuel H. Sloan & Co. (or any other broker or dealer registered with the Commission of which Samuel H. Sloan may become a principal or controlling person) as required by Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17a-4 promulgated thereunder, 17 C.F.R. 240.17a-4;
- (b) Enjoined from further violations of the examination provisions of Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17a-4 promulgated thereunder, 17 C.F.R. 240.17a-4; and
- (c) Ordered not to remove, destroy or alter the books and records of Samuel H. Sloan and Samuel H. Sloan & Co. required to be made, maintained and preserved pursuant

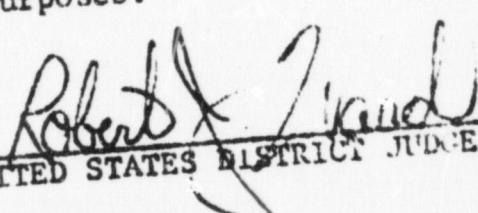
1 || md:mg

to Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rules 17a-3 and 17a-4 promulgated thereunder, 17 C.F.R. 240.17a-3 and 17a-4; and

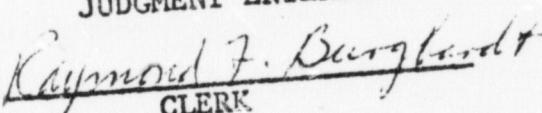
(d) Enjoined from further violations of the provisions for initiating over-the-counter quotations of Section 15(c)(2) of the Exchange Act, 15 U.S.C. 78o(c)(2) and Rule 15c2-11 promulgated thereunder, 17 C.F.R. 240.15c2-11, (a full copy of the Rule is attached hereto and made a part of this Order of Injunction), while and at a time said defendants failed to possess, maintain, preserve or make reasonably available upon request to any person expressing an interest in a proposed transaction in the security being quoted, and/or member of the plaintiff Commission's staff those items of information required to be in the possession of a broker-dealer before a broker-dealer may lawfully publish any such quotation as required by Rule 17 C.F.R. 240.15c2-11(a)(4) and (c).

It is further ordered that this Court shall retain jurisdiction over this matter for all purposes.

Dated: New York, New York
January 17, 1975
Issued at 6 p.m.


Robert F. Land
UNITED STATES DISTRICT JUDGE

JUDGMENT ENTERED: -1-
1/2/75


Raymond F. Burghardt
CLERK

For RELEASE Monday, September 13, 1971

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549

SECURITIES EXCHANGE ACT OF 1934
Release No. 9310

ADOPTION OF RULE 15c2-11 UNDER THE SECURITIES EXCHANGE ACT OF 1934

The Securities and Exchange Commission today announced the adoption of Rule 15c2-11 under the Securities Exchange Act of 1934 ("the Act"). In general, Rule 15c2-11 prohibits the initiation or resumption of quotations respecting a security by a broker or dealer who lacks specified information concerning the security and the issuer.

On June 24, 1970, in Securities Exchange Act Release No. 8909, the Commission published its proposal to adopt Rule 15c2-11. It has considered the comments and suggestions it received in response to that proposal and now adopts the rule in the form set forth below.

The Commission has discussed on an earlier occasion the practices of some companies and persons in connection with the distribution of the securities of "shell" corporations by means of the "spin off" device. 1/ These practices have often resulted in the initiation of market making activities by some brokers and dealers by the submission of quotations, in most cases, at a time when no financial or other information concerning the security or the issuer was available to either the brokers and dealers submitting the quotations or to public investors induced to purchase the security. Frequently, there was a substantial increase in the market price of the securities due, in large measure, to the fraudulent and manipulative activities of the persons involved.

Although the practices discussed in Securities Act Release No. 4982 involved the securities of "shell" corporations, the fraudulent and manipulative potential inherent in those situations also exists when a broker or dealer submits quotations concerning any infrequently-traded security in the absence of certain information.

Therefore, to protect public investors against these occurrences, Rule 15c2-11 (subject to certain exemptions) prohibits a broker or dealer from submitting any quotation (as defined) for any security to any quotation medium unless (a) a registration statement has become effective

1/ Securities Act Release No. 4982, July 2, 1969.

with respect to such security within 40 days prior to the time of submission or publication of the quotation, and was not subject to a stop order at the time of such submission or publication, and unless the broker or dealer has in his records a copy of the prospectus, or (b) a notification under Regulation A has become effective with respect to such security within 40 days prior to the time of submission or publication of the quotation, and was not the subject of a suspension order at the time of such submission or publication, and unless the broker or dealer has in his records a copy of the offering circular, or (c) the issuer is required to file reports pursuant to Section 13 or 15(d) of the Act, or is the issuer of a security covered by Section 12(g)(2)'8 or (G) of the Act, the broker or dealer has a reasonable basis for believing that the issuer is current in filing the reports or statements required, and the broker or dealer has in his records a copy of the issuer's most recent annual report and any other reports required to be filed at regular intervals which were filed after such annual report, or (d) the broker or dealer has in his records specified information, which he must make reasonably available to any person expressing an interest in entering into a transaction in that security with him, and which he has no reasonable basis for believing is not true and correct, and which was obtained by him from sources which he has a reasonable basis for believing are reliable. As that term is used in the rule, the requirement that the broker or dealer "make reasonably available" the specified information would mean that the broker or dealer must furnish the information to the interested person at the cost of reproduction, if for any reason it is impractical to provide the information in any other manner. The rule also requires the broker or dealer to send to the inter-dealer quotation-system, at least 2 days before the submission or publication of the quotation, the specified information in a form prescribed by such system.

The rule also requires that the broker or dealer keep, with respect to any quotation which is within the provisions of the rule, records regarding all the circumstances surrounding the quotation, including the identity of the persons for whom the quotation is submitted or published and any information given the broker or dealer by such persons. All information required to be kept by the broker or dealer is to be maintained and preserved as part of his records for the periods specified in Rule 17a-4 of the Act.

The rule exempts from its provisions the submission or publication of a quotation respecting a security admitted to trading on a national securities exchange which is traded on such an exchange on the same day or on the day before the day of submission or publication. The rule also exempts a security which has been the subject of both bid and ask quotations at specific prices at least twelve days within the previous thirty calendar days with no more than four business days in succession without such a quotation. 2/ Some of the comments received requested the Commission

2/ It should be noted that this exemption provision requires prior quotations at the specified frequency for the period immediately preceding the broker's or dealer's submission or publication of his quotation. Thus, the exemption does not apply if at any time the market for the security in the previous thirty days has not met the specified conditions.

to exempt from the provisions of the rule certain situations which, it was claimed, are not within the basic purpose of the rule. There is a general provision exempting the publication or submission of any quotation which the Commission may exempt, either unconditionally or upon specified terms and conditions, as not constituting a fraudulent, manipulative or deceptive practice comprehended within the purpose of the rule. Those persons who believe that the submission or publication of their quotations would not contravene the purpose of this rule are invited to make a written submission stating their reasons and specific facts supporting that belief, in order to afford the Commission an opportunity to determine whether to apply this exemptive provision in those situations.

It should be emphasized that this rule is not intended to, and does not, excuse brokers and dealers from their duty to comply with applicable registration and other anti-fraud provisions of the federal securities laws and Commission rules, including their duty to make appropriate inquiry. In this connection, brokers and dealers should be aware that the submission or publication of a quotation at a price which does not bear a reasonable relationship to the nature and scope of the issuer's business or its financial status or experience, may constitute a part of a fraudulent or manipulative scheme.

STATUTORY BASIS

The Securities and Exchange Commission, acting pursuant to the provisions of the Securities Exchange Act of 1934, and particularly Sections 15(c)(2), 17(a), and 23(a) thereof, and deeming it in the public interest and for the protection of investors, hereby adopts Rule 15c2-11 as set forth below, effective December 13, 1971.

TEXT OF RULE 15c2-11

Rule 15c2-11. Initiation or Resumption of Quotations Without Specified Information

(a) It shall be a fraudulent, manipulative, and deceptive practice within the meaning of Section 15(c)(2) of the Act, for a broker or dealer to publish any quotation for a security or, directly or indirectly, to submit any such quotation for publication, in any quotation medium (as defined in this rule) unless:

(1) the issuer has filed a registration statement under the Securities Act of 1933 which became effective less than 90 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium, provided that such registration statement has not thereafter been the

subject of a stop order which is still in effect when the quotation is published or submitted, and such broker or dealer has in his records a copy of the prospectus specified by Section 10(a) of the Securities Act of 1933; or

(2) the issuer has filed a notification under Regulation A under the Securities Act of 1933 which became effective less than 40 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium, provided that the offering circular provided for under Regulation A has not thereafter become the subject of a suspension order which is still in effect when the quotation is published or submitted, and such broker or dealer has in his records a copy of such offering circular; or

(3) (A) the issuer is required to file reports pursuant to Section 13 or 15(d) of the Act, or is the issuer of a security covered by Section 12(g)(2)(B) or (G) of the Act, and

(B) the broker or dealer has a reasonable basis for believing that the issuer is current in filing the reports required to be filed at regular intervals pursuant to Section 13 or 15(d) of the Act, or, in the case of insurance companies exempted from Section 12(g) of the Act by subparagraph 12(g)(2)(G) thereof, the annual statement referred to in Section 12(g)(2)(G)(i) of the Act; and

(C) the broker or dealer has in his records the issuer's most recent annual report filed pursuant to Section 13 or 15(d) of the Act, or the annual statement in the case of an insurance company not subject to Section 12(g) of the Act, together with any other reports required to be filed at regular intervals under such provisions of the Act which have been filed by the issuer after such annual report or annual statement; or

(4) such broker or dealer has in his records, and shall make reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker or dealer, the following information (which shall be reasonably current in relation to the day the quotation is submitted), which he has no reasonable basis for believing is not true and correct or reasonably current, and which was obtained by him from sources which he has a reasonable basis for believing are reliable: (1) the exact name of the issuer and its predecessor (if any); (2) the address of its principal executive offices; (3) the state of incorporation, if it is a corporation; (4) the exact title and class of the security; (5) the par or stated value of the security; (6) the number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year; (7) the name and address of the transfer agent; (8) the nature of the issuer's business; (9) the nature of products or services

offered; (10) the nature and extent of the issuer's facilities; (11) the name of the chief executive officer and members of the board of directors; (12) the issuer's most recent balance sheet and profit and loss and retained earnings statements; (13) similar financial information for such part of the two preceding fiscal years as the issuer or its predecessor has been in existence; (14) whether the broker or dealer or any associated person is affiliated, directly or indirectly with the issuer; (15) whether the quotation is being published or submitted on behalf of any other broker or dealer, and, if so, the name of such broker or dealer; and, (16) whether the quotation is being submitted or published directly or indirectly on behalf of the issuer, or any director, officer or any person directly or indirectly the beneficial owner of more than 10 percent of the outstanding units or shares of any equity security of the issuer, and, if so, the name of such person, and the basis for any exemption under the federal securities laws for any sales of such securities on behalf of such person. If such information is made available to others upon request pursuant to this subparagraph, such delivery, unless otherwise represented, shall not constitute a representation by such broker or dealer that such information is true and correct, but shall constitute a representation by such broker or dealer that the information is reasonably current in relation to the day the quotation is submitted, that he has a reasonable basis for believing the information is not true and correct, and that the information was obtained from sources which he has a reasonable basis for believing are reliable.

(b) With respect to any security the quotation of which is within the provisions of this rule, the broker or dealer submitting or publishing such quotation shall maintain in his records information regarding all circumstances involved in the submission of publication of such quotation, including the identity of the person or persons for whom the quotation is being submitted or published and any information regarding the transaction provided to the broker or dealer by such person or persons.

(c) The broker or dealer shall maintain in writing as part of his records the information described in paragraphs (a) and (b), and any other information (including adverse information) regarding the issuer which comes to his knowledge or possession before the publication or submission of the quotation, and preserve such records for the periods specified in Rule 17a-4.

(d) For any security of an issuer included in paragraph (a)(4), the broker or dealer submitting the quotation shall furnish to the inter-dealer-quotation-system (as defined below), in such form as such system shall prescribe, at least 2 days before the quotation is published or submitted, the information regarding the security and the issuer which such broker or dealer is required to maintain pursuant to said paragraph (a)(4).

(e) For purposes of this rule:

(1) "Quotation medium" shall mean any "inter-dealer quotation system" or any publication or electronic communications network or other device which is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(2) "inter-dealer quotation system" shall mean any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.

(3) except as otherwise specified in this rule, "quotation" shall mean any bid or offer at a specified price with respect to a security.

(f) The provisions of this rule shall not apply to:

(1) the publication or submission of a quotation respecting a security admitted to trading on a national securities exchange and which is traded on such an exchange on the same day as, or on the business day next preceding, the day the quotation is published or submitted.

(2) the publication or submission of a quotation for securities of foreign issuers exempt from Section 12(g) of the Act by reason of compliance with the provisions of Rule 12g3-2(b).

(3) the publication or submission of a quotation respecting a security which has been the subject of both bid and ask quotations in an inter-dealer quotation system at specified prices on each of at least twelve days within the previous thirty calendar days, with no more than four business days in succession without such a two-way quotation.

(g) The requirement in subparagraph (a)(4) that the information with respect to the issuer be "reasonably current" will be presumed to be satisfied, unless the broker or dealer has information to the contrary, if:

(1) the balance sheet is as of a date less than 16 months before the publication or submission of the quotation, the statements of profit and loss and retained earnings are for the 12 months preceding the date of such balance sheet, and if such balance sheet is not as of a date less than 6 months before the publication or submission of the quotation, it shall be accompanied by additional statements of profit and loss and retained earnings for the period from the date of such balance sheet to a date less than 6 months before the publication or submission of the quotation.

(2) other information regarding the issuer specified in subparagraph (a)(4) is as of a date within 12 months prior to the publication or submission of the quotation.

11

(h) This rule shall not prohibit any publication or submission of any quotation if the Commission, upon written request or upon its own motion, exempts such quotation either unconditionally or on specified terms and conditions, as not constituting a fraudulent, manipulative or deceptive practice comprehended within the purpose of this rule.

By the Commission.

Theodore L. Humes
Associate Secretary

NOTICE

In corresponding with the Commission about mailing list changes and delisting, please include ALL MAILING LIST CODES AND SYMBOLS appearing in your address as presently shown.

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

JUDGE WARD

74 CIV. 5729

74 CIVIL ACTION FILE NO.

SECURITIES AND EXCHANGE COMMISSION

Plaintiff

v.

SAMUEL H. SLOAN Individually and d/b/a
SAMUEL H. SLOAN & CO.

SUMMONS

Defendants

To the above named Defendants :

You are hereby summoned and required to serve upon

William D. Moran
Regional Administrator

plaintiff's attorney , whose address

26 Federal Plaza
New York, New York 10007

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT

Clark of Court.

Deputy Clerk.

74 Civil
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN Individually and d/b/a
SAMUEL H. SLOAN & CO.

Defendants.

COMPLAINT

WILLIAM D. MORAN
Regional Administrator

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
26 Federal Plaza
New York, New York 10007
Telephone No.: (212) 264-1636

Copy received
Samuel H. Sloan

12/30/74 6:05 P.M.

175 given
to Pcty NY

SELLERS AT

Fee Pd 9/300

Jan 21 3 41 PM '75
S. C. N.Y. 80

U.S. DISTRICT COURT
NEW YORK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff

-Against-

SAMUEL H. SLOAN, individually and
d/b/a SAMUEL H. SLOAN & COMPANY,

Defendants.

NOTICE OF APPEAL.

: 74 Civil 5729
: R. J. W.

Notice is hereby given that the defendant above named hereby appeals
to the United States Court of appeals for the second circuit from the
order of injunction signed by the Hon Robert J. Ward on January 17,
1975 and entered in this action on January 20, 1975.

Dated: New York, N.Y.,

January 20, 1975.

Samuel H. Sloan

SAMUEL H. SLOAN
defendant, pro se
114 Liberty Street.
New York, N.Y., 10006
(212) 583-8565.
(212) 227-5816.

TO: SECURITIES & EXCHANGE COMMISSION
26 Federal Plaza.
New York, N.Y., 10007

1 md:mg

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - -
5 SECURITIES AND EXCHANGE COMMISSION,

6 Plaintiff,

7 v. 74 Civ. 5729

8 SAMUEL H. SLOAN, individually and
9 d/b/a SAMUEL H. SLOAN & COMPANY,

10 Defendants.
11 - - - - - x

12 Before:

13 HON. ROBERT WARD,
14 District Judge

15 New York, New York
16 December 30, 1974
17 4:45 p.m.

18 APPEARANCES:

19 WILLIAM D. MORAN, Esq.,
20 Attorney for Plaintiff
21 WILLIAM NORTMAN, Esq.,
22 JEROME M. SELVERS, Esq.,

23 of Counsel.

24
25 SAMUEL H. SLOAN, Pro Se

1 md:mg

2

2 (In chambers).

3 THE COURT: Mr. Selvers.

4 MR. SELVERS: Your Honor, my name is Jerome
5 Selvers, and to my right is Mr. William Nortman.

6 We are counsel for the Securities and Exchange
7 Commission, plaintiff in the action against Samuel H. Sloan
8 individually and doing business as Samuel H. Sloan & Company.

9 We are here this afternoon to seek a temporary
10 restraining order to prevent further violations of the
11 Commission's rules and law, specifically Section 15C and
12 Rule 15(c)(2), which deals with initiating quotations in
13 over-the-counter securities, and with Section 17A and
14 Rule 17(a)(3), which are commonly known as the bookkeeping
15 provisions.

16 The reason we are here again, your Honor, Mr.
17 Sloan approximately two weeks ago was notified by letter
18 of the Commission's intention to inspect his books and
19 records on Thursday, December 26.

20 Additionally, I personally called Mr. Sloan and
21 advised him that on December 26, members of the staff of
22 the Commission would seek to examine his books and records.

23 On Thursday, December 26, as we had previously
24 advised Mr. Sloan, Commission staff members Thomas Golan
25 and Ira B. Spindler went to 1761 Eastbourne Avenue in the

2 Bronx where we had been advised Mr. Sloan is maintaining
3 his books and records, and sought to examine his books
4 and records.

5 At that time Mr. Sloan denied Mr. Golan and
6 Mr. Spindler access to his books and records, and further
7 advised them that he would deny them access to books and
8 records which were stored in Lynchburg, Virginia.

9 At that point, your Honor, we had been attempting
10 to examine Sloan's books and records during the periodic
11 course of his business, as is customary, and is the cus-
12 tomary nature of the Commission's business.

13 In addition, with respect to Rule 15(c)(2)(11);
14 basically that rule requires a broker-dealer maintain,
15 furnish, possess, furnish and preserve certain information
16 with respect to quotations in the over-the-counter, for
17 over-the-counter securities.

18 We had been advised, and we had in our receipt
19 at that time hundreds of copies of Form 211s, which is
20 the form which is completed by a broker and submitted to
21 the National Quotation Bureau for listing in an over-the-
22 counter security.

23 These forms are then sent from the National
24 Quotation Bureau to the New York Regional Office of the
25 Commission for examination.

2 Mr. Sloan, in completing each and every form --
3 your Honor, I have with me a hundred or two hundred, al-
4 though at the end of the brief that we have submitted
5 there is a copy of one form which will serve as an example
6 of each and every form, they are all the same; that is,
7 they contain no information as required by the rule.

8 It is the purpose of this rule to furnish
9 current and adequate information before making a market
10 in a security.

11 Additionally, the rule specifically requires
12 that the information and the files surrounding the circum-
13 stances of these quotations be preserved pursuant to Sec-
14 tion 17A and Rule 17(a)(4).

15 Additionally, to maintaining the information,
16 the information must be made available to any individual
17 who requests or is possibly interested in effectuating a
18 purchase.

19 Clearly, since Mr. Sloan did not have the infor-
20 mation, as it indicates on the form, he couldn't possibly
21 furnish it to any interested party, interested in a trade
22 with Mr. Sloan.

23 Additionally he further violated Rule 15(c)2-11
24 by denying the Commission access to his books and records.

25 The rule specifically prescribes that the records

2 regarding 15(c)2-11 be maintained in accordance with
3 Rule 17A-4, which says that the records are to be main-
4 tained in an easily accessible place.

5 Your Honor, Mr. Sloan having submitted these
6 hundreds of quotations to the National Quotation Bureau,
7 the NQB, has in fact published in the pink sheets Mr.
8 Sloan's quotations for these securities.

9 We therefore seek a temporary restraining order
10 to restrain Mr. Sloan from submitting any further quota-
11 tions to the National Quotation Bureau.

12 We also seek a mandatory order so that we may
13 inspect Mr. Sloan's books and records to see whether he
14 is in compliance with other provisions of the Federal
15 Securities laws as well as the previous Court order.

16 Pending a final determination for a preliminary
17 injunction and a permanent injunction, we feel there exists
18 the need for a temporary restraining order.

19 If I may add, these violations on the part of
20 Mr. Sloan are intentional. Mr. Sloan has stated to the
21 Commission employee Ira Spindler, as detailed in his af-
22 fidavit, that it was his intention to violate Rule 15(c)
23 2-11, and at the time Mr. Spindler advised him that he was
24 in violation, Mr. Sloan stated to him that it was his
25 intention to submit further Form 211s, which in fact he did.

1 md:mg

6

2 continually violating Rule 15(c)2-11.

3 The Commission sent to Mr. Sloan a letter on
4 December 19, 1974, stating, in brief, that he was required
5 to maintain and preserve his books and records in accord-
6 ance with Commission laws and rules.

7 In addition, your Honor, the Commission received
8 a letter from Mr. Sloan, dated November 6, 1974, which
9 advises us of his intention not to permit any Commission
10 employee to inspect his books and records absent a search
11 warrant.

12 THE COURT: I have a recollection of having
13 received a copy of this letter of November 6.

14 I would note that it would appear from the let-
15 ter that copies were sent to the United States Court of
16 Appeals for the Second Circuit, re Docket No. 74-1436,
17 and to Judge Griesa of this court re 74 Civil 2792, as
18 well as to myself and to Thomas Taylor, Esquire, Office of
19 General Counsel, Securities and Exchange Commission.

20 Mr. Sloan, I will hear from you.

21 MR. SLOAN: First, your Honor, I want to make a
22 request that the Commission be restrained from issuing any
23 press releases or statements to the public with regard to
24 the commencement of this action.

25 The Commission has the policy of in effect putting

2 announcements in the Wall Street Journal the next day any
3 time a lawsuit is commenced, and I think this has the ef-
4 fect of causing a person to be deemed guilty before he is
5 proven innocent.

6 In criminal cases and other cases, the Courts
7 have told litigants not to make any statements to the
8 press, and I think that this would be an appropriate state-
9 ment at this time.

10 I have come into court almost in a deliberate
11 effort to challenge the constitutionality of various
12 rules and provisions under the Securities and Exchange
13 Act of 1934, and I don't feel that I should suffer the
14 prejudice which would result by virtue of any news releases
15 at this time.

16 The next point is --

17 THE COURT: Let me find out.

18 It would appear to the Court that what will
19 occur here is that whatever papers are presented here
20 today will be filed within the Court in the normal course
21 of events.

22 Needless to say, I neither can nor would pre-
23 clude any of the media from having access to any filed
24 documents.

25 In addition to the filed documents, is it the

1 md:mg

8

2 intention of the Commission to give out some separate
3 and independent press release?

4 MR. NORTMAN: Yes, your Honor, it is the Com-
5 mission's practice, and particularly at the time an action
6 is first commenced, to issue what is commonly referred to
7 as litigation release which may or may not be picked up
8 by various other newspapers, including such papers as the
9 Law Journal, which, of course, is very diligent in moni-
10 toring the complaints that are filed in this courthouse.

11 This is the Commission's general policy.

12 The staff has no power, and, frankly, no desire
13 to see an abrogation of this policy. This policy is
14 uniformly applied to all individuals and is simply a state-
15 ment of fact as to what action was filed in this courthouse
16 on a particular day, and I find it strange, on the one hand,
17 Mr. Sloan continually contesting the constitutionality of
18 Commission rules to have this Court in effect impose a
19 prior restraint on Commission news-making activities.

20 THE COURT: Well, maybe we do not see eye to
21 eye on that particular subject.

22 I would suggest you can point out to me where
23 this matter has been litigated, if it has been. I am
24 cognizant of certain strictures that have been put forth
25 very recently by the American Bar Association and I will

1 rds:mq 1

9

2 be happy to hear you on the subject.

3 MR. SELVERS: Your Honor, I believe that there,
4 of course, be no prejudice to Mr. Sloan's case. This is
5 a trial before his Honor. This is not a jury matter.
6 There is no harm that could be forthcoming to Mr. Sloan.

7 I would ask the Court to consider that in making
8 a ruling.

9 MR. NORTMAN: The simple fact is that as
10 Judge MacMahon stated in an opinion which has been pub-
11 lished in the CCH and I assume in due course in the Federal
12 Reporters, Mr. Sloan is no stranger to this courthouse and
13 he has filed a myriad of different lawsuits, all of which
14 have generated a modicum of publicity.

15 I find it strange by any stretch of the imagina-
16 tion to find any prejudice by simply reporting the innocu-
17 ous fact that a lawsuit has been filed.

18 THE COURT: Needless to say, anything which
19 would apply to you would apply equally to Mr. Sloan despite
20 the fact he may not be a member of the bar of this court.
21 Mr. Sloan has asked that there be no releases except in
22 filed papers.

23 I would enter an order to the effect that that
24 be the case for both sides in this litigation. The media
25 can be referred to the papers which are on file here at the

1 rds:mg 2

10

2 courthouse. But if I find that either side, and I mean
3 this, Mr. Sloan, gives out any information to the media,
4 I will act on that matter with dispatch.

5 Therefore, I am going to tell both sides in
6 this case the media can be apprised there are papers on
7 file here at the courthouse. They may examine those papers
8 and that is where it stops.

9 We are not going to litigate this case, either
10 side, in the press. The press can have free access to
11 the court files.

12 Your papers here are rather complete. But it
13 would seem to me, Mr. Sloan to the contrary notwithstanding,
14 that it is not good to litigate criminal cases, and
15 by the same token, civil cases, in the press.

16 I recognize that the Commission has its own
17 problems as far as its budgets and its public image is
18 concerned. At the same time I think that the public image
19 of any agency is enhanced by the end work product, not by
20 the beginning press releases.

21 And I would direct both sides here to issue no
22 releases and that goes not only for those who are present
23 here but those superiors who are not present here.

24 You may direct the media to all filed papers,
25 nothing more.

58

2 What is next?

3 MR. SLOAN: Thenext point is, I'm not sure if
4 this is the proper time to do it, but in due course I am
5 going to make a motion to have this case tried by a three-
6 judge constitutional court, inwhich my claim is that the
7 rules and regulations which they are-- under which they
8 are bringing this lawsuit-- I have not seen the complaint
9 at this point. I have been handed a copy of a proposed
10 order to show cause and two affidavits which are attached
11 to that, but I have not received the complaint.12 Apparently there was a brief which is also forth-
13 coming. I request I be given that.14 THE COURT: Mr. Selvers is going through his
15 papers right now and I gather he w.ll furnish them. He
16 is now in the process of handing that material to you.17 So the record is clear, the Court has received
18 a document entitled "Order to Show Cause and Temporary
19 Restraining Order"; also an affidavit of David M. Burnett,
20 sworn to December 30, 1974; an affidavit of notice to you,
21 Mr. Sloan, of his application.22 I think your presence here indicates that you
23 were given notice.24 I have also a complaint, and finally, a memorandum
25 of law in support of the present motion.

2 Do you now have all of those papers?

3 MR. SLOAN: Yes, it appears that I have every-
4 thing.

5 THE COURT: One of the first things that I will
6 do then at this time is to ask you to look at them and
7 then to the extent you wish to address yourself to them
8 now, I will certainly hear you.

9 MR. SLOAN: Your Honor, in the first place,
10 I have read, prior to going into this, I read Section 17A
11 of the Securities Exchange Act of 1934 and Rule 17(a)(4)
12 promulgated thereunder with great care.

Now, Section 17A, although it does state that the books and records shall be subject to periodic inspection by the Commission, I do not find anything in the language of Section 17A which requires that I make my books and records available to the Commission.

20 In addition to that, if there were such an
21 interpretation of that section, I would claim that it would
22 be unconstitutional because under the Fourth Amendment of
23 the Constitution of the United States an individual has
24 the right to be secure in his home, and since books and
25 records are in my apartment, I feel I have every right to

2 deny access to my apartment without the production of a
3 search warrant, which is what I referred to in the ori-
4 ginal letter, I believe dated November 6th.

5 The next point is under Rule 17(a)(4) there is some
6 language in the rule that the books and records must be
7 maintained in an easily accessible place.

8 I feel that I am clearly not in violation of
9 that rule because the books and records are in an easily
10 accessible place --

11 THE COURT: Except you have chosen not to make
12 them accessible when the Commission investigators have come
13 to that place. Is that right?

14 MR. SLOAN: I have chosen not to make them ac-
15 cessible to the Commission but they are easily accessible
16 to me.

17 My interpretation of the rule is not that I have
18 to make them accessible to the Commission any time they want.

19 THE COURT: Well, do you have any judicial au-
20 thority to back up that contention?

21 MR. SLOAN: The best authority I can come up
22 with is the analogy, the Commission makes a point that un-
23 less they can examine my books and records, there is no way
24 for them to determine whether I am in compliance with the
25 rule.

2 My answer to that is that in the case, for ex-
3 ample, of contraband merchandise or illegal drugs which
4 a person has in their apartment or in some other location,
5 that certainly if the Government could go into everybody's
6 apartment and examine and search thoroughly to discover
7 contraband material, then, of course, they would be in a
8 much better position to enforce the drug laws of this
9 country.

10 But the courts have ruled that the Government
11 can't do that.

12 In this particular case, the Commission has
13 various remedies.

14 THE COURT: Well, they are here to attempt to
15 enforce one of them.

16 Now you say that they can't because the statute
17 is unconstitutional, violative, for example, of the Fourth
18 Amendment.

19 Is that your position?

20 MR. SLOAN: Yes. So unclear and ambiguous I
21 cannot determine whether a specific act of mine is in vio-
22 lation.

23 THE COURT: What section do you deem to be so
24 ambiguous as to be unconstitutional?

25 MR. SLOAN: Rule 17A(4).

2 THE COURT: What about the statute, what section
3 of the statute do you deem unconstitutional?

4 MR. SLOAN: I deem the whole statute to be
5 unconstitutional.

6 Apparently this action is brought on a violation
7 of Section 17A.

8 THE COURT: Which is 15 U.S.C. 78(Q).

9 MR. SELVERS: Your Honor, the text, as the law
10 is contained on page 8 in the Commission's memorandum of
11 law, is stated verbatim.

12 THE COURT: I have the U.S. Code annotated in
13 front of me.

14 I don't see, Mr. Sloan, that there has been
15 any ruling on the constitutionality of this section. So
16 you have come here with a First. Am I correct?

17 MR. SLOAN: I have studied the case law as
18 well as I can and I have found very little case law on the
19 question of the constitutionality of the Act as a whole.

20 THE COURT: There is a great deal, if I recall
21 correctly, of case law on required records and their ap-
22 plicability to the constitutional exemptions, and it seems
23 to me that I had a case many years ago which I thought we
24 might look into.

25 Miss Cushman, would you get Volume 243 of the

1 rds:mg 8

16

2 Federal Sup, please?

3 (Pause.)

4 MR.NORTMAN: Is your Honor making reference to
5 the Olsen case?

6 THE COURT: Yes.

7 MR.NORTMAN: That is on page 12 of the brief.

8 THE COURT: That case that I'm thinking of did
9 not relate directly to the statute we are dealing with but
10 to my recollection, it related to the same problem.

11 MR. SLOAN: What year was this case? It is
12 not cited correctly.

13 THE COURT: It is Securities and Exchange Com-
14 mission, Plaintiff, v. Erlaine C. Olsen, d/b/a Fitch
15 Investors Service, Defendant, 243 Federal Supplement, 338,
16 of this court, 1965.

17 Excuse me, gentlemen.

18 I have to go outside a minute.

19 Mr. Sloan, please look at this case, since I was
20 the counsel for the man who sat in your chair.

21 (Pause.)

22 THE COURT: I would suggest that that case would
23 be dispositive of your arguments here. The case is cited
24 there by Judge Tyler, United States v. Pine Valley Poultry
25 Distributors Corp., 187 Fed. Sup. 455, Southern District of

2 New York, 1960; and Shapiro v. United States, 335 U.S. 1,
3 1948.

4 I think they destroy the Fourth Amendment argu-
5 ment, which I must suggest that my partners and I tried to
6 make in that case, and I think it does represent the law
7 in this district sufficiently that I would be inclined
8 to say the section was not the same, the arguments made
9 here by Judge Tyler would be applicable.

10 Of course, there are numerous other cases cited
11 in the annotations to the Fourth Amendment, the Constitution,
12 under Footnote 1007 in the United States Code Annotated;
13 the substance of those are to the effect that the investi-
14 gations of entities such as the Securities and Exchange
15 Commission, where they require the production of books and
16 records, would not constitute an unreasonable search and
17 seizure in violation of the Fourth Amendment.

18 But I think it would be premature for me at this
19 time to do anything other than indicate to you that I think
20 your position on the law is weak.

21 I do that now because I do not want you, should
22 I sign a temporary restraining order, to proceed and not
23 be aware that a violation of the restraining order might
24 subject you to serious penalties.

25 You may proceed.

2 MR. SLOAN: On that case, I just glanced at it,
3 but I would like to point out the Commission has other
4 remedies available. They can subpoena my records. They
5 have not sought to do so.

6 THE COURT: Are you telling them now that were
7 they to serve a subpoena you would respond?

8 MR. SLOAN: I would perhaps move to quash the
9 subpoena and the issue could be taken care of. It is one
10 thing to proceed that way.

11 They wrote me the letter, I believe it was
12 December 11th or December 19th and they could have just
13 as easily served a subpoena.

14 As a matter of fact, I have been in the Com-
15 mission's office practically every day for the last two
16 or three weeks looking up various information which is
17 available in their files and, therefore, they certainly
18 can't argue that there is any difficulty in serving me with
19 a subpoena.

20 In fact, they stated on some occasions they are
21 going to charge me rent.

22 The next point is that there is also another
23 pending lawsuit. The original action which was before
24 this Court is on appeal to the United States Court of
25 Appeals but there is another lawsuit now pending before

2 Judge Griesa and they could discover my books and records
3 under the Federal Rules of Civil Procedure in that pending
4 action, particularly since that action seeks declaratory
5 relief declaring the very rules unconstitutional which are
6 the subject of this injunctive action.

7 Were it not for the fact that your Honor had
8 before him the other-- a trial, if this matter had come
9 before any other judge besides either yourself or Judge
10 Griesa, I was going to ask, whichever judge it was, to
11 refer this case to whatever judge, you know, would be ap-
12 propiate.

13 But in any case --

14 THE COURT: It appears that the matter has
15 come before me. I don't know if that is by lot or by
16 choice, gentlemen. I haven't had a chance to really look
17 at the praecipe that is filed.

18 Was this put down as a related case to the 1971
19 case that I tried?

20 MR. NORTMAN: Yes, your Honor.

21 THE COURT: Is there any reason, since that case
22 is closed here, you chose that case rather than this on
23 the case that Mr. Sloan mentioned, which appears to be an
24 open matter?

25 MR. NORTMAN: Yes, your Honor.

2 To begin with, the fact of the matter is that
3 Mr. Sloan's open case before Judge Griesa really raises
4 issues which are completely alien to an SEC enforcement
5 action. This matter has been heard by the Second Circuit,
6 and I refer specifically to the Everest Management case,
7 where cross-claims were attempted to be inserted in the
8 Commission's action and the Court in no uncertain terms
9 indicated that would be inappropriate to befuddle and slow
10 down an SEC enforcement action by the various things that
11 generally come up in private litigation.

12 It is just fortuitous that the SEC is involved
13 in the other lawsuit because there are many other parties.
14 Damages are being asked for, all of the issues which the
15 Court of Appeals said would be completely improper to
16 interject in an SEC enforcement matter.

17 That is primarily the reason.

18 THE COURT: Let me make one other inquiry.

19 Mr. Sloan touched on the fact that the appeal
20 from the judgment which was entered against him by me last
21 January is still pending.

22 Has that been set down for a date for argument?

23 MR. SLOAN: I haven't written my brief yet.

24 I had my suitcase with me. I am in the process of catching
25 an airplane to Iceland. I brought the transcripts of that

1 rds:mg 13

21

2 proceeding with me and I was going to write my brief in
3 Iceland.

4 THE COURT: Are you under some stricture from
5 the Court of Appeals to get your brief filed by some par-
6 ticular time?

7 MR. SLOAN: No.

8 MR. NORTMAN: I might add the Commission's
9 general counsel has been more than generous to grant the
10 postponements.

11 THE COURT: He did proceed through most of the
12 case pro se.

13 MR. NORTMAN: We did that in recognition of the
14 fact.

15 THE COURT: I think that was a proper thing to
16 do.

17 Mr. Sloan, if there is anything else you want
18 to say relative to my hearing both sides on this applica-
19 tion for a temporary restraining order, you might tell me.

20 Let me ask you one question: Temporary restrain-
21 ing orders, by their nature, normally do not run beyond
22 ten days. As you know. How long are you going to be
23 in Iceland?

24 MR. SLOAN: There is a conference before Judge
25 Griesa on January 10th. A motion conference. I am

2 making a motion in that action to convene a three-judge
3 court. Because I have to be there for that motion confer-
4 ence, that is when I was planning to return, on January
5 10th.

6 THE COURT: Well, I would suggest this. I assume
7 that you are still operating basically a one-man type
8 business so that you won't be doing very much business in
9 the next ten days, will you?

10 MR. SLOAN: I have instructions, because I have
11 done some transactions in the last few days. They have
12 not settled yet. They will be coming due when I am in
13 Iceland. Therefore, I am going to be issuing checks. I am
14 going to write the checks before I leave and payment will
15 be made -- I have somebody who is going to take care of
16 that function while I am away.

17 THE COURT: You see, the Commission has made
18 applications before me for a mandatory order directing
19 you to permit immediate examination of books, and I must
20 say that I am disposed to going along with the application.

21 I have a fair familiarity with the background
22 of your business activities from a fairly lengthy trial
23 which we had during 1973.

24 They also seek a restraint from further viola-
25 tions of the examination provision and order that you not

2 remove, destroy or alter books, and order that you not
3 further violate the provisions for initiating over-the-
4 counter quotations of Section 15(c)(2) of the Exchange
5 Act and Rule 15(c)2-11 promulgated thereunder.

6 I must say at this point I am inclined to grant
7 their application. I don't so far see that you have come
8 forward with any arguments which I find persuasive other
9 than that you feel very strongly, and I'm sure quite sincerely,
10 that the Securities Exchange Act provisions to which
11 we have made reference here are unconstitutional.

12 I must say I am inclined to grant their application
13 but I will hear anything else you want to say.

14 MR. SLOAN: I am saying more than simply that
15 they are unconstitutional. I am saying that the rule does
16 not require me to turn the books and records over. So
17 that any injunction or restraining order which this Court
18 signs, which in the language of the order requires me to
19 comply with Rule 17(a)(4), I would simply say that this
20 rule does not require me to turn my books and records over
21 to the Commission.

22 An injunction which was entered on January 11,
23 1974, which-

24 THE COURT: They are not asking you, as I understand it, to just hand over your books. They are asking

2 me to order you to make those books available to them for
3 immediate examination, and I am prepared, frankly, to do
4 that.

5 MR. SLOAN: It happens that my airplane is sup-
6 posed to leave at eight o'clock.

7 The reason why we are here, part of the reason,
8 is that several days ago, I called Mr. Selvers and advised
9 him that I would appreciate if he is going to bring some
10 action against me, that he do it before December 30th be-
11 cause on the evening of December 30th, I would be leaving.

12 This is one reason why we are here because I
13 did notify Mr. Selvers well in advance I would be leaving
14 on this date. It just happens by coincidence that
15 it has come on at, let's say, the 11th hour.

16 The unfortunate thing is every time I leave the
17 country the general feeling is that I am running away, I'm
18 absconding.

19 THE COURT: No. You have always come back. I
20 have no cause to believe that to be the case. In fact,
21 you have corresponded with the Court on the occasion of
22 some of your trips and indicated that you expect to do
23 this and that and return. I have seen you back here now
24 and see you here today. I have no reason not to believe
25 that you will not be coming back.

2 But let me ask you this:

3 You say you have left checks and other things
4 with someone. Have you left your books and records in
5 the custody of some other person who might provide the
6 Commission with access?

7 MR. SLOAN: My books and records are in my
8 apartment. Not in the custody of any person.

9 THE COURT: It is locked up?

10 MR. SLOAN: That's right.

11 THE COURT: And there is no one there?

12 MR. SLOAN: That's right.

13 MR. NORTMAN: May I be heard on that?

14 THE COURT: Yes.

15 MR. NORTMAN: It seems what it really boils
16 down to is a question of the public interest versus Mr.
17 Sloan's interest in keeping his scheduled appointments in
18 Iceland.

19 I submit, particularly I think not enough attention
20 has been paid to the 15(c)2-11 problem. Here we have
21 a blatant situation where Mr. Sloan says he is deliberately
22 going to violate a clear rule. And your Honor has indicated
23 at this point there is no law to indicate this is
24 unconstitutional.

25 Mr. Sloan wants to take off and go to Iceland

1 rds:mg 18

26

2 for a vacation or what have you.

3 We feel it would be an undue imposition on the
4 part of the public, as represented by the Commission, to
5 have to await Mr. Sloan's return.

6 The reason I think it is important is as fol-
7 lows:

8 Mr. Sloan has submitted various listing appli-
9 cations with the NQB. Mr. Selvers indicated earlier
10 that his briefcase is filled with these applications.
11 These applications will be coming to fruition within the
12 next several days; that is to say, quotations should start
13 to appear in the pink sheets which in our view, based on
14 admissions made by Mr. Sloan in his own applications for
15 listing privileges, indicates he simply does not have
16 the information the rule requires him to have.

17 The question is what is the public to do in the
18 next few days? What about the individual who may or may
19 not want the information? We know now he does not have
20 any information.

21 Are we to wink our eye at the situation because
22 Mr. Sloan is going to be on an airplane to Iceland?

23 And if your Honor signs this order, it seems to
24 me he would be in violation if he does not take some
25 reasonable steps to withdraw those quotations before they

2 appear in the pink sheets.

3 THE COURT: I don't intend that those quotations
4 should be acted upon by any members of the public before
5 you have a full hearing before me.6 MR. SLOAN: Let me say something about the
7 quotations.8 In the first place, all the quotations, the last
9 quotations I submitted were on Monday of this past week
10 and the reason why I stopped submitting quotations after
11 that was because it takes three business days for the
12 Quotation Bureau to process them.13 Now, accordingly, the last quotations should
14 appear in the pink sheets that have already gone to press.
15 In other words, the pink sheets have already been published
16 with any quotations I would submit -- that's not completely
17 true, however, because in some cases there was something
18 wrong with the form.19 In some cases, I forgot to sign the form and
20 they sent it back and I signed it.21 I'm not sure when those particular applications
22 are coming through. I think even this particular af-
23 fidavit of David Burnett states that it does not indicate
24 any applications for listing that I can see which are
25 going to be published after today.

2 Secondly, when I give these cards and these
3 applications to the Quotation Bureau, they process them
4 automatically. So it takes almost an affirmative act on
5 my part to withdraw them.

6 In other words, I would have to get on the phone
7 and call up the Bureau and say: I have changed my mind.
8 I don't want you to publish those quotes.

9 THE COURT: Unless you authorize the Commission
10 right here on the record to do this on your behalf.

11 MR. SLOAN: I won't authorize the Commission
12 to do anything on my behalf.

13 THE COURT: Very well. I will sign the order
14 to show cause in the form presented.

15 I would assume once I have signed it, you can
16 make service upon Mr. Sloan here and I suggest that that
17 be done outside of my office or the inner portion of my
18 chambers where we are now conducting this hearing.

19 You can do it out in my secretary's office.

20 MR. NORTMAN: Your Honor, if I may make one
21 more further comment with respect to the portion of the
22 order appearing on page 2 requiring immediate examination;
23 given the fact that Mr. Sloan has made arrangements, I
24 don't know what his intentions are, whether he is going to
25 comply with your Honor's order or not, but if he has any

2 feelings of compliance, any good faith effort, we certainly
3 would be willing to give him a reasonable number of days,
4 like two or three days, to make the appropriate arrange-
5 ments to have either himself or some official who could
6 at least point out to us what the records are that he has
7 to solve this problem.

8 THE COURT: I give Mr. Sloan two basic alterna-
9 tives here. Either I will stop all of his activities in
10 the securities area pending his permitting you to examine
11 his records; or I would suggest that he work out some
12 arrangement with you where he can give you some authority
13 today.

14 Now, if he can't do that - I recognize he is
15 about to leave -- and if he can't work something out with
16 you, I'll just put this entire matter in status quo and
17 direct you to take whatever steps are necessary to be cer-
18 tain that the public is not affected, including communi-
19 cating with the National Quotation Bureau, so that we do
20 not have any member of the public involved in any transac-
21 tion which may later prove costly to that member of the
22 public.

23 MR. SLOAN: May I point out on this issue that
24 you have brought up, is that my activities do not cost
25 the public anything. As a matter of fact, I am performing

2 a public service because I'm submitting applications for
3 listing in the pink sheets on approximately 300 securities
4 which have not been traded for quite some time in most
5 cases.

6 THE COURT: I saw two securities mentioned in
7 the papers before me in that regard.

8 MR. SLOAN: These securities, the people who
9 own them, the securities have no market value whatsoever
10 prior to the submission of these listing applications and
11 now they have a market value, however limited, and in many
12 cases, other brokers, members of the New York Stock Ex-
13 change, prestigious brokers, have gone in and proceeded
14 to submit listings for these same securities that I have
15 done and this has happened in the past two or three days.

16 So all that I am doing is opening up markets and
17 creating new markets for securities which were previously
18 unmarketable.

19 THE COURT: Once the Commission has a chance
20 to look at your records and ascertain the facts for them-
21 selves, which is their duty under the statute, it may be
22 that they will permit you to continue this activity.

23 At the same time, I am not going to permit you
24 to continue the activity and still there be no examination
25 of your records.

2 So you are going to have to work this out with
3 them.

4 I suggest at the moment that probably the best
5 we can do is put this entire matter into a stop position
6 until such time as you are able to return from your trip
7 to Iceland and work things out with the Commission, and
8 at that time we will proceed further.

9 Let's turn to the activities at hand.

10 Do you have something else?

11 MR. SLOAN: Yes..

12 I feel that the Commission has no standing to
13 bring an action. I realize your Honor disagrees with me
14 but I want to make the point that there is nothing in the
15 Constitution of the United States which authorizes the
16 creation of an independent regulatory agency.

17 The Constitution divides the Government into
18 legislative, judicial and executive departments.

19 They have an administrative proceeding.

20 Final briefs were filed in July 1973.

21 The Commission has had a year and a half to
22 consider the matter and still they have reached no determina-
23 nation.

24 They can stop my brokerage activities immediately
25 if they want to simply by barring me from associating with

2 a securities dealer. Certainly they had two and a half
3 years to do that.

4 Secondly, I want to state this: I felt during
5 the course of the last trial that we had that this Court
6 displayed prejudice in my case and I am going to ask that
7 this matter be assigned to another judge because I feel
8 that I am being prejudiced by actions of this Court.

9 THE COURT: Well, I'll sign the temporary re-
10 straining order and then I will indicate to the assignment
11 committee that an application has been made to me to
12 recuse myself on the ground of bias.

13 We now have a new statute and under the cir-
14 cumstances I am going to ask that the assignment committee
15 reassigned this case to another judge.

16 I am not going to put you in a position where
17 you feel that you are not having a full and fair hearing
18 by an unbiased judge. I do not consider that I am
19 biased in your case but I consider the appearance of justice
20 just as important and because you feel this way, I shall
21 not proceed further than signing this temporary restraining
22 order.

23 The only other person I could send you to at this
24 hour is the ex parte judge, and that is Judge Griesa.

25 If you would prefer to proceed to his chambers

2 at this moment and make the application to him. He is
3 the duly designated ex parte judge.

4 Would you like to do that?

5 MR. SLOAN: Yes, your Honor.

6 THE COURT: Let me see if he is there. If
7 he is there, I will send you there at once. If not, I
8 will sign the temporary restraining order tonight.

9 (Pause).

10 MR. SELVERS: May the Commission be heard on
11 this point?

12 (Pause.)

13 MR. SELVERS: Your Honor, I believe the record
14 of the injunctive trial would, of course, bear out your
15 statements that there was no prejudice involved and I
16 think the record is abundantly clear.

17 At this point I would feel that having con-
18 cluded our discussions here on the law and on the facts
19 involved that either would be proper, considering the
20 hour, that his Honor sign the temporary restraining order
21 rather than referring it to Judge Griesa.

22 THE COURT: It is now twenty minutes to six.

23 I have just called Judge Griesa's chambers.

24 I understand he is on the bench here and I would suggest
25 if you would all wait right here, I will go in and see

2 Judge Griesa and see if he wishes to take this matter to-
3 night. If he does, I will send you in to him. If he
4 does not, I will sign the temporary restraining order and
5 then permit you, Mr. Sloan, to make whatever application
6 you wish in the future to whatever judge is assigned the
7 case.

8 Is that satisfactory to you, sir?

9 MR. SLOAN: Yes.

10 THE COURT: If you wait, I will be back very
11 shortly, gentlemen.

12 (Recess.)

13 THE COURT: I have spoken with Judge Griesa,
14 gentlemen, who has a room full of people in the robing
15 room outside of Courtroom 506 and he is unable to take
16 this application.

17 In view of that, I am going to sign the temporary
18 restraining order. I will communicate with the assign-
19 ment committee of the court and indicate there has been a
20 request made of me to disqualify myself and I will request
21 the assignment committee to assign the case to another
22 judge.

23 I will now proceed to the matter at hand. The
24 return date on the order to show cause, what is the earliest
25 date which is convenient to all concerned?

2 MR. SLOAN: My earliest date, your Honor, is
3 January 10th.

4 MR. NORTMAN: We are ready any time, your Honor.
5 Tomorrow.

6 THE COURT: His earliest day is January 10th.
7 You have a problem, Mr. Sloan. Temporary re-
8 straining orders normally have only a ten-day life. The
9 Commission is ready any time. I will have to put it down
10 within the ten-day period.

11 If you request an extension, then, of course, it
12 would extend the temporary restraining order until the
13 date you request.

14 So I am going to put it down now for January
15 3rd. And --

16 MR. SLOAN: If it were a date such as January
17 8th I would be able to cut my trip short for two days
18 and come back and that would be within the ten-day period.

19 THE COURT: I will make it ten days, then, from
20 today, today being the first of those days. January 8th
21 would be the tenth day.

22 MR. SLOAN: Thank you, your Honor.

23 THE COURT: Gentlemen, I will make this at 2:15
24 p.m. I am putting it down now for Courtroom 506, which
25 is the basic emergency part.

2 I'll tell you what, I'll put it down in my court-
3 room temporarily, which is courtroom 519 for January. I
4 note it is now five minutes of six and I will require
5 personal service on Mr. Sloan by 6:30 tonight. He is here
6 I'm sure he will accept service.

7 Will you do that, Mr. Sloan?

8 MR. SLOAN: Yes, sir.

9 THE COURT: I will sign it at 5:55 p.m.

10 Gentlemen, what I have done is on the first page
11 it is returnable before me, and I consider that a pro
12 forma matter; that is, I will request the assignment com-
13 mittee to make a reassignment because of Mr. Sloan's ap-
14 plication. Returnable before me on January 8th, 1975, at
15 2:15 p.m. in Room 519 here at the courthouse.

16 I direct that personal service be made by 6:30
17 p.m. today.

18 I have now signed the order to show cause and
19 dated it 5:55 p.m.

20 The other matter I would mention to you is what-
21 ever the Commission's practice is in other cases, the press
22 may be referred to the filed papers but I direct that there
23 be no press or information release other than the press
24 may examine the filed papers or, if you wish to give the
25 press an exact copy of the filed papers, you may do that.

2 MR. NORTMAN: Yes, your Honor.

3 THE COURT: And, Mr. Sloan, the same thing goes
4 for you, since this is done at your request. There is to
5 be no materials submitted to the press other than material
6 filed with this court. Once you have filed it with the
7 court, you have the same prerogative the Commission does,
8 to present this information to any media you wish.

9 MR. SLOAN: Incidentally, I would like to say
10 that any publicity on my cases has been solely by virtue
11 of the workings of the normal course of things. I have
12 never submitted Judge MacMahon's decision to the press or
13 any other decisions. These have been published by the
14 Law Journal and by the Commerce Clearing House, Federal
15 Securities Law Reporter in their normal course of activi-
16 ties.

17 One other point, your Honor, and I want to
18 clearly understand what the significance of this order is.

19 in reading the order, I see nothing which would
20 prevent me, for example, from catching my eight o'clock
21 flight to Iceland tonight.

22 MR. SELVERS: That would raise the question of
23 how Mr. Sloan would be able to comply with your mandatory
24 order to permit immediate examination in an easily accessible
25 place.

2 THE COURT: He can authorize someone else in
3 person or he could send a Telex from Iceland.

4 I would suggest this. If he chooses not to
5 during this absence from the country, I will permit you to
6 freeze and stop any and all transactions pending his re-
7 turn so that the public will in no way be harmed by any-
8 thing that might transpire in his absence.

9 Knowing that he is going to Iceland, I will
10 deal very carefully with any application for contempt.

11 I would rather have you submit an order to the
12 Court stopping all transactions during his absence and then
13 he can move to vacate that as well as anything else he
14 wishes to do upon his return.

15 I do not intend to order him-- I'm not sure that
16 I could anyway, but I do not intend to order him not to
17 proceed with his plans.

18 At the same time I indicate to you that I would
19 be receptive to any further orders which might insure that
20 there be no activity which occurs in his absence.

21 Needless to say if you worked out something with
22 him where he can give authority to a third person to let
23 you see these records, then it might not be necessary for
24 you to proceed beyond the ambit of the order, the temporary
25 restraining order.

2 Anything else, Mr. Sloan?

3 MR. SLOAN: No, your Honor, except that I'm
4 sort of wondering because you made a reference to the fact
5 you would authorize the Commission to stop any transac-
6 tions.

7 Of course, transactions which I have already
8 made on the telephone, have been made.

9 THE COURT: I think I have to leave that to them.
10 If you are not going to be here until the 8th, it seems
11 to me, and if you have no representative here, it seems
12 to me they can't make application to myself or to another
13 judge to whom this matter is assigned ex parte, and I tell
14 you that now.

15 MR. SLOAN: I don't know what form that appli-
16 cation would take.

17 THE COURT: I don't either. Perhaps they don't
18 at this juncture. Perhaps they will do nothing. I don't
19 know.

20 MR. SLOAN: I would submit there is no mechanism
21 available to undo something which has been done already
22 to begin with.

23 THE COURT: Something which has been completed;
24 you may be right. Something which is in process, you may
25 be wrong.

2 MR. SLOAN: I would like to point out another argument which concerns a matter of interstate commerce.

3 Now, the Court only has jurisdiction with regard 4 to acts which are in the course of engaging in interstate 5 commerce.

6 I have been extremely careful in this particular 7 case not to involve myself in interstate commerce in any 8 way and I have gone to the extreme that any transactions 9 which have been made in the last two or three days, the 10 comparisons have been delivered by messenger so that I have 11 not even used the mails or any other means or instrumentalities 12 of interstate commerce.

13 THE COURT: I don't want to enlighten you one 14 way or the other on this subject, but your mere utilization 15 of the National Quotation Bureau might involve you 16 with violations of the federal law.

17 I will say no more than that because it is 18 not my function to hear, it seems to me, to do other than 19 to alert you that you may be in jeopardy in a matter which 20 you believe unintentional.

21 The last time we were together I urged you on 22 several occasions to retain counsel. I do that tonight. 23 I think it is in your interest. These matters are serious 24 and under the circumstances I can only suggest one more

2 time that you retain counsel to represent you in them.

3 MR. NORTMAN: Your Honor, I hate to keep you
4 here, your Honor, so late, but this relates to your di-
5 rective with respect to press releases.

6 Now, your Honor has admonished the Commission
7 to do no more than make available papers that are filed.

8 THE COURT: That is correct.

9 MR. NORTMAN: We submit that a necessary proph-
10 lactic is to alert the public that a temporary restraining
11 order has been signed. Frankly, the pink sheets are not
12 just circulated in the New York Metropolitan area. It is
13 highly unlikely that this case would on its own generate
14 the kind of interest that the Wall Street Journal might be
15 interested in.

16 The only thing we can do is to issue an outstand-
17 ing litigation release. How else would they be apprised?

18 THE COURT: Under the circumstances I suggest as
19 an alternative, if you wish to communicate with the
20 National Quotations Bureau or present an order to this
21 Court relative to the National Quotations Bureau, assuming
22 we have jurisdiction over them, I'm certain that this will
23 be examined rather carefully by any judge of the court.
24 Certainly it would be by me. It may well be at that time
25 if you are dealing with another judge, since I have been

2 accused by Mr. Sloan of being biased against him, that
3 other judge might feel differently about my very limited
4 admonition to the Commission to publicize this particular
5 case.

6 Maybe another judge will feel quite differently
7 about this, and I do not intend that my own very limited
8 directives shall be considered by any other judge to be
9 the law of the case.

10

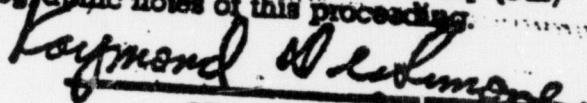
...

11

12

13

14 I (We) hereby certify that the foregoing
15 is a true and accurate transcript, to the best
16 of my (our) skill and ability, from my (our)
17 stenographic notes of this proceeding.



18
19
20
21
22
23
24
25
Official Court Reporter
U. S. District Court

90

1 rkmch

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

CLERK'S OFFICE
COURT REPORTERS
RETURN TO COURT REPORTERS
ROOM 803 FOR FILING

4 -----
5 SECURITIES AND EXCHANGE COMMISSION :

6 v. : 74 Civ. 3729

7 SAMUEL H. SLOAN, individually and :
8 d/b/a SAMUEL H. SLOAN CO., :
9 Defendant. :
10 -----
11

12 BEFORE: HON. ROBERT J. WARD,

13 District Judge.
14

15 New York, New York
16 January 17, 1975 - 3:30 p.m.

17 PRESENT:

18 WILLIAM D. MORAN,
19 Regional Administrator,
20 Securities and Exchange Commission,
21 by: WILLIAM NORTMAN, Esq.,
22 JEROME SELVERS, Esq., and
23 THOMAS TAYLOR, Esq.,
24 of Counsel.

25 SAMUEL H. SLOAN,
26 Pro se.

12

91

2 (In open court)

3 THE COURT: Since the motion here is by the
4 Government, I will hear first from Government counsel.

5 Mr. Selvers.

6 MR. SELVERS: Your Honor, if it please the
7 Court, my name is Jerome Selvers, counsel for the
8 Commission.9 Your Honor, we seek this afternoon an order
10 of injunction enjoining Mr. Sloan from further
11 violations of Section 17(a) and Rule 17A-4, commonly
12 known as the bookkeeping provisions of the Securities
13 Exchange Act of 1934.14 In addition, we seek an order of injunction
15 enjoining Mr. Sloan from further violations of
16 Section 15(c) and Rule 15 C2-11 commonly known as the
17 provisions for instituting quotations in over-the-counter
18 securities.19 Through the affidavits previously submitted and
20 attached to the complaint in this action, we have shown
21 cause to this Court. Mr. Sloan in the past two months
22 has continuously conducted his business in contravention
23 of these rules and regulations. Specifically, Mr. Sloan
24 refuses to allow the Commission access as required under
25 Rule 17 A-4 and examination rights as provided under

2 17(a) to determine whether Mr. Sloan is in fact
3 maintaining his books and records as required by these
4 sections and rules.

5 THE COURT: He challenges the constitutionality
6 of the legislation?

7 MR. SELVERS: Yes, your Honor, that appears to be
8 Mr. Sloan's contention.

9 We, of course, in a brief submitted previously
10 to the Court, have detailed the law as it stands in this
11 jurisdiction, relying on SEC v. Olsen, which holds
12 that Mr. Sloan's privilege that he asserts, his Fifth
13 Amendment privilege of self-incrimination, will not cover
14 his books and records as they are quasi-public in
15 nature.

16 It is also interesting to know, your Honor,
17 that Mr. Sloan does business out of his personal residence,
18 or a residence which he considers to be his home, at
19 1761 Eastburn Avenue in the Bronx, and for purposes of
20 the SEC's inspections and examinations, he wears one hat and
21 claims it's his personal residence and that we are not
22 entitled to examine his books and records. On the
23 other hand, Mr. Sloan is actively conducting a securities
24 business out of the same address. This is an address and a
25 telephone number that is listed for brokers and dealers to

1 rkmch

4

2 contact him.

3 Clearly, Mr. Sloan is not entitled to claim a
4 self-incrimination right regarding his books and
5 records.

6 In addition, by denying the Commission the
7 access which is clearly stated and to which the Commission
8 clearly has a right under these sections, Mr. Sloan
9 is denying the Commission the opportunity to determine
10 whether or not he is in fact in compliance with the
11 previous Court order of injunction of January 1973. We
12 are unable to determine whether Mr. Sloan is maintaining
13 his books and records in conformity with these rules.

14 In addition, your Honor, Mr. Sloan has embarked
15 upon an additional wilful violation of the federal
16 securities laws and that is with respect to Rule 15 C2-J1.
17 The rule, in brief, requires that under certain circumstances
18 where a security has not been listed or bids or quotations
19 haven't been entered or failed to have been entered
20 over a given period of time, certain information need be
21 provided before such a quotation is listed in the pink
22 sheets. Mr. Sloan has wilfully violated this rules.
23 He makes no bones about it.

24 It is his contention that he intended to
25 violate this rule; he has stated it to Commission staff

1 rkmch

5

2 members. I believe he stated it on the record at the
3 time that the Commission was seeking a temporary restraining
4 order.

5 To this end Mr. Sloan has submitted hundreds
6 of Forms 211, which is the form which must be submitted
7 to the National Quotation Bureau which is the publisher
8 of the pink sheets, a media for the quotation of over-the-
9 counter securities. These Form 211's are absent any
10 information necessary to comply with the rule. Mr. Sloan
11 instead marks each form on the back with respect to
12 information which is to be provided; Mr. Sloan indicates
13 either that he doesn't know the information, he doesn't
14 have the information, or just plain n-o, no.

15 As of this date, Mr. Sloan has published in
16 excess of 250 quotations in the pink sheets and, in fact,
17 will continue to do the same unless he is enjoined by this
18 Court.

19 Moreover, I feel that it's important to point
20 out to the Court that in Mr. Sloan's absence during the
21 original period of the temporary restraining order, Mr. Sloan
22 through his agent, a gentleman by the name of Henry Landson
23 attempted to list with the National Quotation Bureau additional
24 securities, this clearly in contravention of the temporary
25 restraining order which this Court entered on December 30th.

2 In addition, Mr. Sloan represented to this
3 Court on December 30th at the time of the temporary
4 restraining order that there would be no individual
5 available or no individual at his residence to make his
6 books and records available for inspection.

7 Your Honor, this was not the case. This was
8 not the truth. Mr. Landson was at 1761 Eastburn Avenue.
9 He was answering the phone, "Sloan & Company." The
10 Commission was advised that he had called the National
11 Quotation Bureau and attempted to submit bids in securities
12 in violation of not only 15 C2-11 but, more significantly,
13 the Court order.

14 Clearly, your Honor, if there is not an injunction
15 entered against Mr. Sloan at this point, he will continue
16 with his wilful conduct and continue to violate Rule 15 C2-11
17 as well as continue to deny the Commission access to his
18 books and records, as well as examine them.

19 Your Honor, the Commission believes that the
20 entrance of an injunction is in the public interest
21 and that a showing of additional violations has been made
22 quite clearly. In fact, the need for the injunction is even
23 more clearcut in light of the fact that Mr. Sloan appears
24 not to even have complied with your temporary restraining
25 order.

2 Better evidence of a need for injunction,
3 I don't think we could put forth. It appears that Mr.
4 Sloan will go about and conduct his business as he sees
5 fit with total impunity to the federal security laws
6 as well as Court orders.

7 Wherefore we ask the issuance of an order
8 of injunction by this Court against Samuel H. Sloan
9 individually and doing business as Samuel H. Sloan &
10 Company.

11 THE COURT: And that would be in the form of
12 a temporary restraining order, that is, so far as the injunc-
13 tive provisions are concerned. You would seek an injunction
14 relative to the bookkeeping portion, the institution of
15 quotes regarding over-the-counter securities, and what
16 else?

17 MR. SELVERS: Your Honor, we would additionally
18 seek the mandatory order to compel Mr. Sloan to allow
19 the Commission access to his books and records. Mr.
20 Northman in particular attempted to make an arrangement
21 on December 30th, in an attempt to examine Mr. Sloan's
22 books and records. We were, of course, unequivocally
23 denied such access. We have been unable during the
24 interim and during the time that the temporary restraining
25 order has been in existence to examine Mr. Sloan's books

1 rkmch

8

2 and records.

3 He takes the position, again, as the Court has
4 stated, not only to his books and records at 1761 Eastburn
5 Avenue, but in an additional private avenue in Lynchburg,
6 Virginia, as well as his listed office residence of
7 120 Broadway, New York, New York.

8 In sum, your Honor, that is the scope of the
9 injunction that we would be seeking, coupled with the
10 mandatory order regarding books and records, as well as
11 ordering Mr. Sloan not to remove, destroy or alter any
12 of his present books and records.

13 THE COURT: Thank you, Mr. Selvers.

14 Mr. Sloan?

15 MR. SLOAN: Am I to understand the Commission
16 has rested its case at this point?

17 THE COURT: They have made their case and you
18 may now proceed.

19 MR. SLOAN: Your Honor, my understanding today
20 was that there was supposed to be an evidentiary hearing.

21 THE COURT: You may produce any witnesses you
22 want. I told you that, and I understood you were going
23 to produce one witness. You may proceed.

24 MR. SLOAN: Your Honor, I spoke to the Securities
25 and Exchange Commission within the last couple of days

2 asking them if they intended to introduce witnesses to
3 testify. Mr. Northman told me that the earliest possibility
4 I would find out who they intended to call or what evidence
5 they intended to offer would be today at 3:15.

6 Now, my understanding --

7 THE COURT: Do you wish to present any witnesses?
8 They have decided to rest on the record as it now exists,
9 and that is for better or for worse.

10 If you wish to present witnesses, I will permit
11 you to do so, as I told you.

12 MR. SLOAN: Your Honor, at this point I wish to
13 proceed as though this were a trial. I would wish to make
14 a motion to dismiss the complaint on the ground that no
15 evidence has been offered in support -- not competent
16 evidence has been introduced in support of an injunction.

17 You can't cross-examine an affidavit, so in a
18 hearing of this sort, an affidavit does not constitute
19 evidence.

20 I would like to cross-examine the individuals who
21 signed these affidavits that have been presented to the
22 Court, but, of course, it's the Commission's job to call
23 them as witnesses. It's not my job to make their case,
24 and at this point I feel it's appropriate to make a motion
25 to dismiss.

2 THE COURT: Your motion is denied.

3 You may proceed.

4 MR. SLOAN: Next, I have a number of motions I
5 wish to make. Some of these motions have previously
6 been made in one form or another, but so the record will
7 be clear on everything. I want to include them in the
8 record.

9 First, your Honor, I am asking that you recuse
10 yourself on three grounds: First, on the grounds of bias
11 and prejudice; secondly, on the grounds that inasmuch as
12 you heard a previous case in which the Securities and
13 Exchange Commission was the plaintiff and I was the
14 defendant that you should not hear this case.

15 My understanding is that the rule is in criminal
16 proceedings that if a judge has sat on a case involving
17 a criminal action, that if the same defendant comes up
18 in another case, that the same judge doesn't under normal
19 circumstances hear that case.

20 THE COURT: I have had occasion to hear such
21 cases and I don't know that there is any firm rule on that
22 subject.

23 MR. SLOAN: The third ground for asking you to
24 recuse yourself from this case is that the case is not
25 properly assigned to you on the designation form.

2 The Commission filled out this form and under pending
3 related cases, they had 1971 case which is now on appeal to
4 the U. S. Court of Appeals, but it's not a pending case
5 before this Court, and therefore, the designation form
6 was improper and you are not properly assigned to this
7 case, because cases are supposed to be assigned by lot,
8 and the Commission feels since they feel they got a
9 favorable decision from you last time, they have a better
10 chance of getting a favorable decision from you this
11 time, rather than a judge assigned in the normal manner.

12 THE COURT: Am I correct that you presented all
13 these grounds to the United States Court of Appeals for the
14 Second Circuit in your petition for writ of mandamus?

15 MR. SLOAN: Yes, your Honor.

16 THE COURT: Am I also correct -- it is my
17 understanding, I haven't actually seen anything on paper,
18 but it's my understanding that your petition for a writ
19 of mandamus was denied?

20 MR. SLOAN: That is correct, but it's also correct
21 even though my petition for a writ of mandamus was denied,
22 I could also raise these same grounds on appeal from this
23 preliminary injunction and, therefore, I don't believe
24 that a dispositive decision has been made with regard to
25 these particular points.

2 THE COURT: You have chosen to move orally to
3 disqualify the Court. I have never been presented with
4 affidavits by you. You seek to disqualify the Court by
5 certain oral statements which you have made.

6 I would suggest that the law in this Circuit
7 with respect to disqualification was set forth by Judge
8 Mansfield in *Hodgson v. Liquor Salesman's Union Local*
9 No. 2 of the State of New York, 444 F.2d 1344, at 1348.
10 Judge Mansfield stated the law of this Circuit with respect
11 to disqualification, as follows:

12 "Turning to the first of these contentions,
13 Section 144 provides that 'whenever a party to any
14 proceeding in a district court makes and files a timely
15 and sufficient affidavit that the judge before whom the
16 matter is pending has a personal bias or prejudice, either
17 against him or in favor of any adverse party, such judge
18 shall proceed no further therein.' In order to guard
19 against frivolous attacks, it further specifies that the
20 affidavit 'shall state the facts and the reasons for the
21 belief that bias or prejudice exists.' Since the purpose
22 of the section is to avoid the appearance as well as the
23 actual existence of bias or prejudice on the part of the
24 trial judge, the facts stated in the affidavit as the basis
25 for the belief that bias or prejudice exists must be

2 accepted as true by the judge, even though he or she knows
3 the statements to be false. Burger v. United States,
4 255 U.S. 222, 41 Supreme Court 230, 65 Lawyers Edition
5 481 (1931); Rosen v. Sugarman, 357 F.2d 794 (Second
6 Circuit 1966); Cora v. Hoffman, 212 F.2d 211 (Seventh
7 Circuit 1954).

8 "However, the trial judge must at the outset
9 determine whether the facts so stated would constitute
10 legally sufficient grounds for recusal. Burger v.
11 United States, *supra*; Simmons v. United States, 302 F.2d
12 71, 75 (Third Circuit 1952); Albert v. United States District
13 Court (Sixth Circuit 1960). And if the affidavit is
14 insufficient, he is under just as much of a duty to deny
15 the application as he would be to recuse himself if it were
16 sufficient. Rosen v. Sugarman, *supra*, 357 F.2d at 794;
17 Henry Union Leader Corp., 292 F.2d 381, at 391 (First
18 Circuit), certiorari denied 368 U.S. 927, 82 Supreme
19 Court 361, 7 Lawyers Edition Section 190 (1961).

20 "Mere conclusions, opinions, rumors or vague
21 gossip are insufficient. Burger v. United States, *supra*,
22 255 U.S. at 34. 41 Supreme Court 230; Simmons v. United
23 States, *supra*, 302 F.2d at 75.

24 "To be sufficient, the affidavit must set forth
25 facts including the time, place, persons and circumstances

2 and where based upon an extrajudicial statement of the
3 judge, the substance of that statement. Burger v. United
4 States, *supra*, 255 U.S. at 34, 41 Supreme Court 230;
5 Wapnick v. United States, 311 F.Sup. 183, 184-185 (Eastern
6 District of New York 1969)."

7 I find that there has been no affidavit submitted
8 here and I find the statements which have been made not
9 to be a proper substitute for an affidavit. Nothing said
10 by the defendant in any way shows any personal bias or
11 prejudice on the part of this Court, either against
12 Mr. Sloan or in favor of any adverse party.

13 The word "personal" has been said to be in
14 contrast to "judicial." The Supreme Court has said, "The
15 alleged bias and prejudice, to be disqualifying, must stem
16 from an extrajudicial source and result in an
17 opinion on the merits on some basis other than what the
18 judge learned from his participation in the case."

19 U.S. v. Grinell Corporation, 384 U.S. 563, 583, 86 Supreme
20 Court 1698, 1710, 16 Lawyers Edition 2nd 770 (1966).

21 In addition, Mr. Sloan has indicated that this
22 Court should and must recuse itself because in some way or
23 manner the case here was illegally assigned to the Court.
24 Since such a matter involves the assignment committee, I
25 would note for the record that I took the matter of my being

1 rkmch

15

2 assigned to this case up with the assignment committee,
3 and after the assignment committee met the assignment
4 committee indicated to me through the Chief Judge that
5 this case should remain with me unless I felt I was biased
6 or prejudiced in some way against Mr. Sloan.

7 As I indicated to him previously, this was
8 on December 30, 1974, I do not consider that I am biased
9 or prejudiced personally against Mr. Sloan. Furthermore,
10 I would note that the rules to which reference has here
11 been made, our internal rules governing the business of the
12 District, is designed for the fair treatment of the
13 judges of the district. See 28 U.S. Code, Section 137.
14 And I would suggest that Mr. Sloan has no standing to raise
15 any questions concerning the manner in which the internal
16 rules governing the division of the business of this court
17 are applied.

18 For this Court to have accepted the assignment
19 of this case does not, as a matter of law, demonstrate
20 bias or prejudice under 28 U.S.C., Section 144.

21 I would further note that the affiant, that is, that
22 Mr. Sloan has chosen to bring a petition of mandamus
23 against myself as well as against Judge Griesa, and that
24 this petition has been denied by the Court of Appeals.

25 In view of the inadequacy of the presentation made

2 by the defendant here, his application that this Court
3 recuse itself is in all respects denied.

4 MR. SLOAN: Your Honor, it is correct to state
5 that one of my defenses to this motion is on the grounds
6 of the unconstitutionality of the statute.

7 THE COURT: Isn't that your only defense, Mr.
8 Sloan?

9 MR. SLOAN: No, your Honor, it is not.

10 THE COURT: Are you telling me that you are ready,
11 willing and able to submit your records to the inspection of
12 the Securities and Exchange Commission? Are you telling me
13 that?

14 MR. SLOAN: No, I am not, your Honor.

15 THE COURT: Is there any reason other than your
16 claim that the statute is unconstitutional for your refusal
17 to permit access and examination of your books and records?

18 MR. SLOAN: I also claim that the rules that are
19 referred to are an improper exercise of the Commission
20 rule-making authority.

21 THE COURT: Do you make any other claim, sir?

22 MR. SLOAN: Well, your Honor, I would like to
23 state that there are rules of evidence which this Court
24 must adhere to in making any finding of fact and --

25 THE COURT: What rule of evidence do you make

2 reference to, sir?

3 MR. SLOAN: The rule on hearsay evidence, for
4 example. Most of the statements which are made in the
5 affidavit are based on hearsay.6 For example, the Commission says that we
7 received forms from the National Quotation Bureau or we
8 received information from the National Quotation Bureau
9 or that we spoke to Mr. So-and-So on the telephone.
10 Almost the entire basis of the Commission's case in the
11 affidavits presented to this Court are what would be
12 called hearsay evidence, is not competent evidence.13 THE COURT: Do you wish to take the stand and
14 swear under oath that you have placed no quotes with the
15 National Quotation Bureau in the last thirty days?

16 MR. SLOAN: No, I do not.

17 THE COURT: You did, in fact, place such quotes
18 but you say you are entitled to; isn't that the point?

19 MR. SLOAN: That is correct, your Honor.

20 THE COURT: Very well. You may continue with any
21 other presentation you wish to make.22 MR. SLOAN: Your Honor, I also ask that the Court,
23 that this case be decided by a three-judge Court pursuant
24 to Section 28 U.S.C. 2282 and 2284, on the ground that as
25 an affirmative defense I am seeking to enjoin the enforcement

2 of Rule 15 C2-11, Rule 1783 and 4, and 17 A, and
3 Section 15 Cs of the Securities Exchange Act of 1934, and
4 I am requesting that you ask the Chief Judge of the
5 Court of Appeals to convene a Chief Judge Court to hear
6 my motion for a preliminary injunction.

7 THE COURT: As you know, it's up to the since
8 judge to determine in the first instance whether there has
9 been sufficient presented to cause that request to be
10 made. You realize that, do you not?

11 MR. SLOAN: I think the case is Goosby v. Osser,
12 in which it was stated that there should be a showing
13 that there was -- I believe the word "substantial" was
14 used -- constitutional question.

15 THE COURT: Yes, and that it not be frivolous.
16 What else do you have, sir?

17 MR. SLOAN: Your Honor, I wish to move to dismiss.
18 I would like to make these motions on paper, but due to the
19 shortness of time in this hearing for a preliminary
20 injunction --

21 THE COURT: You have had since December 30th.
22 This is now January 17th and the matter was extended once
23 by Judge Griesa for a period of nine days from the 8th
24 to the 17th.

25 It seems to me the shortness of time, despite your

2 trip to Iceland, you have been back here for approximately
3 ten days, if I recall correctly, and it would seem to
4 me that argument that you did not have time to make up
5 papers falls on somewhat deaf ears, in view of the 16-page
6 presentation that you made to the Court of Appeals.
7 It seems to me you have had time to do that, and I would
8 expect that you should want to present your position on
9 paper.

10 If you have not done so at this time, I am prepared
11 to extend the temporary restraining order upon your
12 application so you may submit papers within some period of
13 time. If you do not wish me to extend the temporary
14 restraining order to permit you to submit papers, I would
15 suggest that I may have very little alternative today.

16 What is your application?

17 MR. SLOAN: Your Honor, the time to answer the
18 complaint has not yet run. I have twenty days to answer
19 and the twenty days is not yet up.

20 THE COURT: But today is the return date, once
21 adjourned, of the motion for a preliminary injunction.
22 And it would seem to this Court that the time has come for
23 you to do more than just stand here and make statements
24 not under oath, and it seems at this point that if you
25 wish to make opposition to the presently filed papers, that

2 you do so by affidavit.

3 I am prepared to permit you to file affidavits
4 in opposition to the Commission's position if you wish, but
5 it would seem to me that if you do wish that, it would be
6 necessary for me to continue the temporary restraining order
7 which I issued and as to which I have heard nothing which
8 would cause me to believe that that should be vacated at
9 this point.

10 What is your request?

11 MR. SLOAN: Your Honor, I am not requesting
12 anything at this point.13 THE COURT: I will deal with the matter, then,
14 as I deem appropriate after you have finished.15 MR. SLOAN: I want to make an oral motion to dis-
16 miss the complaint for failure to state a claim under
17 Rule 9 B of the Federal Rules of Civil Procedure, which
18 state that a complaint must set forth the circumstances con-
19 stituting fraud with particularity. The complaint submitted
20 by the Securities and Exchange Commission is the standard
21 SEC complaint. They file complaints like this in court every
22 single day of the week. They have an enormous number of
23 actions pending before the United States District Courts
24 in various parts of the United States. All complaints
read exactly the same.

2 It's impossible for a defendant to come into
3 court and defend against these massive complaints that
4 the SEC submits without knowing exactly what they are being
5 charged with, and on this ground -- I note in one case
6 I referred to in my petition for a writ of mandamus,
7 Judge Pollack required the Securities and Exchange Commission
8 to replead the complaint with particularity so the
9 defendants are able to frame a response and know what they
10 are being sued for.

11 On this ground, I move to dismiss the complaint.

12 Secondly, I wish to move to dismiss on the
13 grounds that the complaint fails to join a necessary party
14 in the National Quotation Bureau. It's obvious in this case
15 the National Quotation Bureau is a central party to the
16 complaint and, as a matter of fact, by not joining the
17 National Quotation Bureau, I have been subjected to substan-
18 tial prejudice because the Securities and Exchange
19 Commission has, I understand, called the National Quotation
20 Bureau on the telephone, spoken to officers, spoken to their
21 attorneys, and in an attempt to keep them from
22 listing securities in the pink sheets under my name, and since
23 I can't bring them here today -- they are not part of this
24 case -- I feel that I am suffering from substantial
25 prejudice because they have a direct interest in this

2 proceeding, and it's very difficult for me to defend
3 without them being joined, and I am moving to dismiss
4 on that ground.

5 Thirdly, I move to dismiss on the grounds of
6 res judicata in that the Securities Exchange Commission
7 has already obtained an injunction which enjoins me from
8 violation of Rule 1784. They are seeking to obtain a
9 second injunction with respect to exactly the same section.
10 The language is precisely the same as the old injunction, and
11 on this ground I feel that that part of the complaint
12 should be dismissed.

13 Fourthly, I move to dismiss on the grounds that
14 the Court lacks subject matter jurisdiction because no show-
15 ing has been made that any means or instrumentality of
16 interstate commerce was involved in the transactions in
17 question or in the so-called violations of federal securities
18 laws that the Commission keeps referring to.

19 They made no attempt to show there is interstate
20 commerce involved. As a matter of fact, there has not been
21 interstate commerce involved in these particular trans-
22 actions.

23 The fifth grounds for moving to dismiss is that
24 the Securities and Exchange Commission lacks standing to
25 sue. The standing to sue is conferred exclusively upon the

2 executive branch of the United States Government. Lawsuits
3 brought by the United States are always brought by the
4 United States Attorney's Office. There is nothing in the
5 Constitution of the United States that states that any
6 independent agency has the authority to institute suit and
7 in fact --

8 THE COURT: Well, the other day I had a proceeding
9 where the Department of Labor represented by its regional
10 solicitor was suing here on behalf of the Secretary.
11 I find that no different than the situation of the SEC by
12 its counsel suing in this court.

13 You may proceed.

14 MR. SLOAN: I would like to point the Department
15 of Labor is a part of the executive branch of the
16 Government of the United States.

17 THE COURT: What part of the Government of the
18 United States is the Securities and Exchange Commission?
19 It certainly is not either a part of the legislative
20 or judicial branch, and there is only one left.

21 MR. SLOAN: It's not part of the executive
22 branch.

23 THE COURT: What is it? It's an administrative
24 agency which is a part of the executive branch or arm of
25 the Government of the United States.

1 rkmch

2 MR. SLOAN: My understanding is that the Securities
3 and Exchange Commission is entirely independent of the
4 executive branch of the Government of the United
5 States, other than the fact that the Commissioners themselves
6 are appointed by the President with the approval of
7 Congress, and I would like to hear from the Commission
8 on that if they disagree with that interpretation.

9 The Attorney General, for example, cannot order
10 the Securities and Exchange Commission to do anything, or
11 the Commissioners themselves to do anything.

12 THE COURT: I am not sure that the Attorney
13 General can order branches of the executive arm of the
14 Government to do anything. I don't know that he can
15 order the Secretary of State around or the Secretary of the
16 Treasury, but I am not going to get into that.

17 I deem the Securities and Exchange Commission
18 to be a part of the executive branch of the United States
19 Government, albeit an independent regulatory agency.

20 MR. SLOAN: I think the position of the Securities
21 and Exchange Commission itself is different from that.
22 I think they take the position they are independent from
23 any branch of the Government as defined by the
24 Constitution.

25 The next ground for moving to dismiss, your

2 Honor, and if the motion to dismiss is denied, I intend
3 to show this through the testimony of witnesses --

4 THE COURT: I hope you have them here.

5 MR. SLOAN: I think the two witnesses I intend
6 to call are right back in the room.

7 THE COURT: Do you have them under subpoena?

8 MR. SLOAN: No.

9 THE COURT: They may not be in the back of the
10 room when you finish.

11 Would you name them?

12 MR. SLOAN: Thomas Dolan and Ira Spindler and
13 Jerome Selvers. These are the three witnesses I intend
14 to call, but first I am making my motion to dismiss on
15 the grounds just stated. They failed to join a necessary
16 party and res judicata and lack of subject matter juris-
17 diction.

18 THE COURT: What happened to the lack of standing
19 to sue?

20 MR. SLOAN: And lack of standing to sue because
21 the Commission is not part of the executive branch of the
22 Government.

23 THE COURT: Do you have any other motions?

24 MR. SLOAN: No, your Honor, except my motion
25 which I don't believe has been decided yet is that I am

2 requesting a three-judge Court and that this case be trans-
3 ferred to Judge Griesa because he has before him a
4 case with a lower designated docket number.

5 THE COURT: Lower than 71 Civil number which
6 you adverted to in your papers before?

7 MR. SLOAN: Judge Griesa's case is 74 Civil
8 2792. It's not lower than the 71 number but it's lower
9 than the number on this case currently before this Court.
10 and the 71 case is not pending before this Court and
11 therefore I feel it's proper to transfer that case to
12 Judge Griesa.

13 Judge Griesa stated --

14 THE COURT: I would suggest that the 1971 case
15 involves a permanent injunction which is very much before
16 this Court. I will say no more than that. A permanent
17 injunction is a continuing thing. Contempt proceedings
18 may be instituted under it, and other activities may be
19 instituted under it. It's not a final judgment which
20 has been paid and satisfied and done with.

21 What other motions do you have, sir?

22 MR. SLOAN: That is it.

23 I would like to point out one thing. I made
24 a motion for a three-judge Court in the 71 case and was
25 denied on the grounds that this Court has no jurisdiction

2 because the case is presently on appeal to the United
3 States Court of Appeals. Therefore, I would say that the
4 1971 case -- the decisions of this Court must be consistent
5 if this Court has no jurisdiction to decide a case because
6 it's on appeal, it also has no jurisdiction to proceed
7 on the basis of a permanent injunction.

8 THE COURT: Anything else, Mr. Sloan?

9 MR. SLOAN: No, your Honor.

10 THE COURT: Does the Commission wish to make any
11 statement in reply?

12 MR. NORTMAN: Very brief, your Honor. I do not
13 believe we really have to respond to any of the motions
14 that the defendant has made.

15 I would like to just state, for purposes of the
16 record, though, because, frankly, a lot of conversations
17 have a way of becoming distorted, and I am certain that
18 the Court of Appeals may review this decision as well.

19 With respect to Mr. Sloan's assertion based
20 on a conversation he had with me concerning what witnesses,
21 if any, we would be calling, I just indicated to Mr. Sloan
22 who walked into the office at 5:30 at the close of
23 business -- I believe it was on Wednesday -- while I was
24 in the middle of a conference, that he wanted to know what
25 witnesses we were calling, and he wanted to have a list of

2 all our exhibits and copies of them, because if we are
3 having a hearing, he is entitled to them, and in no
4 uncertain terms.

5 I indicated to Mr. Sloan that I thought it would
6 be highly unlikely there would be a need for an
7 evidentiary hearing in light of the fact that no affidavits
8 have been filed, and for the purposes of the record on
9 the motion now before the Court facts are not in controversy.
10 I did not elaborate on that point; I don't think it needs
11 any.

12 With respect to the possibility of calling
13 witnesses, I did indicate that the issues in a rather
14 brief complaint and in the affidavits that were filed
15 are rather clearcut; that if witnesses were to be called
16 based on the issues raised in this lawsuit and this lawsuit
17 alone, that they would most likely be the two gentlemen
18 who are sitting in the back. I would just like that clear
19 for the record.

20 I believe that the record of the Commission in
21 this case shows that we bent over backwards to be more than
22 courteous to Mr. Sloan, as has this Court.

23 THE COURT: The motions made by Mr. Sloan for
24 the transfer of this case to Judge Griesa, for the convening
25 of a three-judge Court, to dismiss the complaint for failure

2 to plead fraud with particularity, for failure to join a
3 necessary party, on the ground of res judicata, on the ground
4 of lack of subject matter jurisdiction, and on the ground
5 of lack of standing to sue, are in all respects denied.

6 You may proceed, Mr. Sloan.

7 MR. SLOAN: The first witness I wish to call is
8 Ira Spindler.

9 MR. NORTMAN: Your Honor, before Mr. Sloan
10 proceeds --

11 THE COURT: Let's get Mr. Spindler sworn because
12 then I want to hear an offer of proof from Mr. Sloan.
13 I presume that is what you had in mind?

14 MR. NORTMAN: Yes.

15 THE COURT: Since Mr. Sloan has conceded all
16 of the relevant facts, I want to know what he intends
17 to prove.

18 I R A B. S P I N D L E R, called
19 as a witness by the defendant, being first duly
20 sworn, testified as follows:

21 THE COURT: Mr. Sloan, I will now hear you.

22 MR. SLOAN: Your Honor, I find this most
23 objectionable. I had not conceded anything. As far as I
24 am concerned, the Court has nothing before it except for a
25 few affidavits and there has been no opportunity to cross-

2 examine an affidavit and, therefore, there is nothing
3 before this Court, and I haven't conceded anything.

4 Secondly, I see no reason why I should make an
5 offer of proof to cross-examine an individual on whose
6 affidavit the request for preliminary injunction is based.
7 There are three affidavits in this case, one by Ira
8 Spindler, one by Jerome Selvers and Thomas Dolan, and
9 I find it most objectionable that I would be asked to make
10 an offer of proof on my attempt to cross-examine a witness
11 whose testimony the Commission itself has brought to the
12 attention of this Court.

13 THE COURT: I will let you proceed with your
14 questions, and I note from your statement that you intend
15 to cross-examine Mr. Spindler on the affidavit which he
16 presented to this Court.

17 I have that affidavit before me, and I will permit
18 you to cross-examine regarding the subject matter thereof.

19 You may proceed.

20 MR. SLOAN: Your Honor, again I object.

21 THE COURT: Ask your questions.

22 MR. SLOAN: Your Honor --

23 THE COURT: Ask your questions, sir.

24 DIRECT EXAMINATION

25 BY MR. SLOAN:

2 Q Mr. Spindler, what is your present occupation?

3 A I am employed in the New York Regional Office
4 of the Securities and Exchange Commission as a financial
5 analyst.

6 Q What do you do in connection with your employment?

7 A I work with the branch of over-the-counter
8 regulation, and my present duties are the examination of
9 unusual stock price movements for possibilities of manipu-
10 lation and other violations of the criminal laws, and
11 also review of the National Quotation Bureau applications,
12 commonly known as Form 211.

13 Q What is the nature of these applications?

14 A The Form 211's are applications used by the
15 National Quotation Bureau, publishers of the pink sheets,
16 to initiate quotations in the pink sheets or resume
17 quotations in stocks that have been out of the pink sheets
18 for some specified period of time.

19 Q Could you explain how this works?

20 A If you could be more specific?

21 THE COURT: The objection is sustained.

22 Next question.

23 Q What does the Quotation Bureau do when it receives
24 a Form 211 -- the Securities and Exchange Commission do?

25 MR. NORTMAN: Objection to the form of the

2 question.

3 THE COURT: Sustained.

4 First you said the National Quotation Bureau;
5 then you said the Securities and Exchange Commission.

6 Would you rephrase your question?

7 Q What do you do when you receive a Form 211?

8 A I review the form to determine if there are any
9 possible violations of the securities laws, specifically
10 Rule 15 C2-11 and other applicable rules and regulations.11 Q How do you determine if there is a violation
12 of Rule 15 C2-11?13 A In the review, 15 C2-11 has certain requirements.
14 Most notable, that certain information be filed along
15 with the application form. I would check the application
16 and any attachments and see if it was in compliance with
17 the rule.18 Q Do you do anything else with respect to these
19 applications to see if they are in compliance?

20 MR. NORTMAN: Objection.

21 What does he mean by "anything else"?

22 THE COURT: Sustained.

23 Q For example, do you call the company? Do you
24 speak to other members of the Securities and Exchange
25 Commission? Do you check into the history of the company

2 and try to find out something about it, yourself?

3 What is the nature of what you do with respect to these
4 applications?

5 A There is a possibility I might do any of the
6 things you mentioned, depending on what direction my review
7 led me.

8 Q In the case of Triex International Corporation,
9 you made a statement here that I submitted a request for
10 a quotation in Triex International.

11 What did you do in connection with this
12 application?

13 MR.NORTMAN: Excuse me, your Honor. Would Mr.
14 Sloan please specify what he means by a statement here, and
15 if there is a written statement would he be good enough
16 to show it to the witness?

17 THE COURT: He doesn't have to show it to the
18 witness but he could point it out to counsel.

19 What are you talking about, "You made a statement
20 here"? I have in front of me an affidavit from Mr.
21 Spindler. Would you specify the paragraph to which you
22 make reference?

23 MR. SLOAN: Paragraph 7. First, I would like
24 to point out that the statements made in Paragraph 7 are
25 hearsay and not competent evidence in a court of law.

2 THE COURT: You are supposed to be asking questions
3 at this point. I know what is competent evidence and
4 I trust that counsel for the Commission do, also.

5 Q In the case of Triex International Corporation
6 referred to here in Paragraph 7, what did you do in con-
7 nection with this application, Form 211?

8 MR. NORTMAN: Objection to the form. It assumes
9 he did something.

10 THE COURT: What, if anything, did you do?

11 A I reviewed the application and I am speaking
12 from memory now. I think it was quite evident in my
13 review that the application was not in compliance with
14 Rule 15 C2-11. I think at that point I called Sloan &
15 Company, spoke with Mr. Sloan, and informed him that it
16 appeared that his intention to quote would violate
17 Rule 15 C2-11, and at that point Mr. Sloan informed me
18 that it was his intention to wilfully violate Rule 15 C2-11.

19 Q Is that what Mr. Sloan said?

20 THE COURT: What words did he use, in exact
21 words or in substance?

22 A It may have been a response to my question, "Do
23 you intend to wilfully violate the rule," his answer would
24 have been "Yes."

25 If he didn't use those words, it would have been

2 in response to my question.

3 Q What did you say to Mr. Sloan and what did he
4 say to you?

5 A In addition to what I said before, he said there
6 were 93 other applications that he had brought down to the
7 National Quotation Bureau and that he did not have current
8 financial information for any of those 93 securities,
9 and that it was his intention to publish quotations in
10 violation of the rule in those cases and possibly many
11 others.

12 Q Isn't it a fact that Mr. Sloan never said that
13 he intended to wilfully violate the rule?

14 A As I said, it may have been in response to a
15 question that I raised.

16 THE COURT: In other words, you said something to
17 the effect, "Mr. Sloan, do you intend to wilfully violate
18 Rule 15 C2-11?" And he said something. What did he say?

19 THE WITNESS: He said, "Yes," then volunteered
20 there were 93 other applications on the way.

21 Q Isn't it a fact that you never used the word
22 "wilfully" in connection with this question you asked,
23 that you more or less asked the question but left out the
24 word "wilfully"?

25 A To the best of my recollection, I used the word

2 "wilfully."

3 Q Did you have any subsequent telephone conver-
4 sations with Mr. Sloan?

5 A I may have.

6 Q When was the next time you spoke to Mr. Sloan?

7 A I can't remember any specifically.

8 THE COURT: What was the date of the conversation
9 which you just testified about?10 THE WITNESS: I think it was December 18th, but
11 if I could review the affidavit --12 THE COURT: In other words, you believe it was
13 December 18th, but you would require the affidavit to
14 refresh your recollection?

15 THE WITNESS: Or other records.

16 THE COURT: And that was what year?

17 THE WITNESS: 1974.

18 Q How was it possible for you to make a determin-
19 ation that I am in violation of Rule 15 C2-11?

20 MR. NORTMAN: Objection.

21 THE COURT: Sustained.

22 Q Can you recall any other conversations between
23 yourself and Mr. Sloan after December 18, 1974?24 A I believe we had several. Some of them Mr.
25 Sloan visited the office of the New York Regional Office and

2 I spoke with him on several occasions after that, and
3 there may have been contacts over the telephone. I
4 remember none specifically, although if reminded of certain
5 ones, I might remember.

6 Q The only conversations you remember at this
7 point is the conversation on December 18th; is that
8 correct?

9 A That is the one you specifically referred to.
10 If you refer to others, I may recall them. I can't recall
11 the whole group of them one at a time.

12 I have no documents in front of me and I have a
13 good memory, but not that good.

14 Q Can you tell me any conversation that you had
15 that you can recall at this point?

16 A If it serves any purpose, you visited the New
17 York Regional Office on several occasions to examine a
18 file that is kept in the branch in which I worked, a file of
19 releases of securities that had been suspended, and you
20 asked me for that file on several occasions, and I gave
21 you that file, and you were copying, I believe, the names
22 of securities that had been suspended.

23 I am sure we had conversations, short conver-
24 sations, at those times. That is the best that I could
25 remember now.

2 If you have any specific questions, I will answer
3 them.

4 Q Was there ever a previous application for
5 Triex International Corporation that you received from
6 Sloan?

7 MR. NORTMAN: Objection.

8 THE COURT: Sustained.

9 Q Was there ever an application -- did Sloan
10 ever submit an application prior to December 18, 1974 for
11 the shares of Triex International --

12 MR. NORTMAN: May I have an offer of proof?
13 It seems we are starting to beat Triex to death. I
14 would like to know what the relevance is with regard to
15 this particular lawsuit, which is whether or not Mr.
16 Sloan made his books and records available to duly
17 authorized SEC personnel.

18 THE COURT: Mr. Sloan, what is the relevancy of
19 your last question? There has been an objection as to
20 relevancy, and I would like to hear from you on its
21 relevancy to the issues before this Court at this time.

22 MR. SLOAN: There was a previous application and
23 I am trying to bring out what the Commission does in
24 connection with these applications, and I am trying to
25 show that the rule is unconstitutional by showing the

2 procedure the Commission has followed with respect to
3 Triex International Corporation and other listings in
4 the pink sheets that have been submitted in general.

5 THE COURT: If the witness can answer the
6 question, I will permit him to do so.

7 THE WITNESS: Your Honor, I think there may have
8 been, but I can't say it with certainty.

9 Q Isn't it a fact that the Securities and Exchange
10 Commission, to your knowledge, contacted Triex International
11 in approximately September of 1974 and advised them that I
12 was attempting to list Triex International in the pink
13 sheets?

14 MR. NORTMAN: Objection.

15 THE COURT: Sustained.

16 Q Are you aware of attempts or communications with
17 Triex International Corporation in connection with the
18 listing of Application Form 211?

19 A Only through you.

20 Q Could you please explain to me what you mean?

21 A You mentioned to me that someone at the
22 Securities and Exchange Commission had contacted Triex
23 and Triex had sent you a letter. I believed it.

24 There are many offices in the Commission and
25 actions of people in my office are not always known to

2 me. To my knowledge, I don't know of any contact between
3 the Commission and Triex with regard to your application
4 other than what you told me.

5 Q Did you contact any other officials of the
6 Securities and Exchange Commission to advise them I had
7 submitted an application for Triex?

8 MR. NORTMAN: Objection.

9 THE COURT: Sustained.

10 MR. SLOAN: What is the ground for your
11 objection?

12 MR. NORTMAN: The objection has been sustained.

13 Q In connection with Franklin New York Corporation,
14 what did you do in connection with this listing application?

15 A I examined the listing application, reviewed
16 it and found that if the quotation was published that
17 it would most likely be in violation of Rule 15 C2-11.
18 I called you at the same time, since Triex and Franklin
19 were submitted together, and what I mentioned before about
20 our conversation holds with regard to Franklin.

21 Q How did you determine that I violated Rule 15 C2-11
22 in connection -- what did you do to determine that I
23 violated Rule 15 C2-11 in connection with Triex?

24 MR. NORTMAN: Objection. I don't believe there
25 has been testimony that Mr. Spindler determined. He

2 examined to see if there was an appearance.

3 THE COURT: He is assuming a fact not in
4 evidence.

5 Mr. Sloan, you have to ask questions reasonably
6 properly. I will give you ever latitude because you are
7 pro se.

8 Q Did you examine the pink sheets to see if I
9 was listed in Triex International?

10 A No. There was no reason to. The application
11 had just been filed.

12 Q At any time did you examine the pink sheets
13 to see if I listed a price quotation in Triex?

14 A I can't remember if I did or I didn't.

15 Q Did you examine the pink sheets to see if I
16 published quotations in any other securities besides
17 Triex?

18 A Yes, I did.

19 Q When was that?

20 A Today, among other times.

21 THE COURT: And what did you find?

22 THE WITNESS: I found that Mr. Sloan published
23 quotations in many securities.

24 THE COURT: Did he publish any quotations sub-
25 sequent to December 30, 1974?

2 THE WITNESS: None that I noticed.

3 Q I notice that you stated in an affidavit
4 dated December 30, 1974 that I had published quotations
5 in the pink sheets.

6 Since you hadn't examined the pink sheets prior
7 to that date, it appears from your testimony --

8 MR. NORTMAN: What paragraph are you alluding
9 to, Mr. Sloan?

10 MR. SLOAN: Paragraph 10 of the affidavit of
11 Ira Spindler.

12 A Are you asking me a question?

13 Q I am answering Mr. Nortman.

14 How did you determine I listed prices in the
15 pink sheets?

16 A In a variety of ways.

17 First, by examination of the pink sheets; and
18 secondly, by conversations with the National Quotation
19 Bureau.

20 Q When did you examine the pink sheets?

21 A Sometime prior to my signing that affidavit.

22 Q You don't remember the date?

23 A No, I don't.

24 Q Do you remember a submission of a Form 211 for
25 a security by the name of Continental Dynamics?

2 THE COURT: Where does that appear in his
3 affidavit?

4 MR. SLOAN: It's not in his affidavit.

5 MR. NORTMAN: Again, Mr. Sloan has indicated his
6 problem is he can't cross-examine an affidavit, but
7 I would like to cross-examine Mr. Spindler with respect
8 to statements in that affidavit and, as your Honor pointed
9 out, there was no such statement made of the
10 security that Mr. Sloan just mentioned.

11 THE COURT: You had better make an offer of
12 proof on this one, Mr. Sloan, so I could understand where
13 you are going.

14 You have put in no papers. You haven't framed
15 the issues in any way. I permitted you to cross-examine
16 within the ambit of this witness' affidavit, because his
17 affidavit was submitted in support of the motion for a
18 preliminary injunction, but I just don't see where you are
19 going.

20 MR. SLOAN: Your Honor, I am again trying to show
21 that the rule is unconstitutional.

22 THE COURT: You have a question of law there
23 that it's unconstitutional. You say it's unconstitutional.
24 We read it and we make a determination on its constitution-
25 ality. What else are you arguing?

2 MR. SLOAN: I am trying to bring out the facts
3 of what the Commission has done. It states in the
4 affidavit of Ira Spindler, Paragraph 10, the office has
5 in its possession 293 Forms 211 submitted by myself.
6 Incidentally, I would like to point out these forms have
7 not been offered into evidence at this hearing, and again
8 I say this is incompetent evidence, but in any event --

9 THE COURT: Did you subpoena them today?

10 MR. SLOAN: No, I didn't.

11 THE COURT: Go ahead. Next question.

12 Q In connection with Continental Dynamics, what
13 did the Securities and Exchange Commission do?

14 MR. NORTMAN: Objection.

15 THE COURT: Sustained.

16 MR. SLOAN: Your Honor, I again must object
17 because in the particular case of Continental Dynamics,
18 I received information today from three different brokers --

19 MR. NORTMAN: Your Honor, with all due respect --

20 THE COURT: Would you like to testify? If you
21 wish to submit yourself to testifying under oath -- so
22 far, all of your discussion has been standing back there,
23 not under oath, making statements which have no probative
24 value, and I would suggest, you are not an officer of
25 this court whose statements I can accept as an officer of

2 the court. You are appearing pro se.

3 You may do that, but at the same time you
4 can't testify until you submit to the oath and then
5 answer questions as you see fit under oath, so that you
6 can have a record in that case.

7 That is what you want?

8 MR. SLOAN: Your Honor, again I object because on
9 a number of cases attorneys from the Securities and
10 Exchange Commission have deliberately made false represen-
11 tations to this Court. They have lied on a number of
12 occasions.

13 As a result, there is substantial prejudice
14 that has resulted from these statements.

15 Mr. Nortman, in particular, has on a number of
16 occasions made statements which are untrue. I am prepared to
17 show from calling witnesses and bringing --

18 THE COURT: You told me you were going to call
19 one witness. You have him on the stand.

20 Let's get on with the examination.

21 MR. SLOAN: Your Honor --

22 THE COURT: That is what you said. Now get on
23 with it. It's twenty minutes of 5:00. Proceed.

24 Q Mr. Spindler, of the 293 Forms 211 submitted by
25 Sloan that you refer to in Paragraph 10, was one of these

2 forms a Form 211 for the shares of Continental Dynamics?

3 MR. NORTMAN: Objection.

4 THE COURT: If you know, sir.

5 A It may have been. I don't know for sure.

6 Q Isn't it a fact you called a number of stock
7 brokers in connection with listings in Continental
8 Dynamics?

9 A That is not true.

10 Q Are you aware -- isn't it a fact that in at least
11 three instances stock brokers were called in to testify
12 within the last two weeks with respect to submitting names,
13 submitting Continental Dynamics in the pink sheets?

14 A If they have been, they have not been called in
15 by me, and I am not aware of it.

16 Q Did you speak -- who would know at the Securities
17 and Exchange Commission about what stock brokers had been
18 called in to testify with respect to Continental Dynamics
19 in the last two or three weeks?

20 MR. NORTMAN: Objection.

21 THE COURT: Sustained.

22 Q Mr. Spindler, what department of the SEC do you
23 work for?

24 THE COURT: Asked and answered.

25 Q Who is your supervisor in that department?

2 A James M. Marrone.

3 Q Does he set the policies for the submission of
4 Forms 211?

5 MR. NORTMAN: Objection.

6 THE COURT: Let him answer the question, if he
7 knows.

8 A I don't know what you mean by "policy."

9 THE COURT: Next question.

10 Q Who determines the policy of the Securities and
11 Exchange Commission with respect to processing of
12 Form 211?

13 THE COURT: If you know.

14 A I have to have a further definition of the
15 word "policy."

16 Q Who tells you what to do when you get a Form 211?

17 A I act fairly independently.

18 Q You make up your own policy?

19 A It's not a matter of policy. I have been
20 trained to do a job and I do it. Every time an
21 application comes in, someone doesn't tell me to look at it.
22 I look at it.23 Q Would it be possible for a broker to violate
24 Rule 15 C2-11?

25 MR. NORTMAN: Objection.

2 THE COURT: Sustained.

3 Q Do you investigate violations of Rule 15 C2-11
4 which do not involve a submission of a Form 211?

5 MR. NORTMAN: Objection.

6 THE COURT: Sustained.

7 Q Isn't it a fact that unless a broker submits a
8 quotation, an actual price to the pink sheets, that it's
9 impossible to violate Rule 15 C2-11?

10 MR. NORTMAN: Objection.

11 THE COURT: Sustained.

12 Q Who else have you spoken to in connection with
13 the facts relative to this lawsuit?

14 MR. NORTMAN: Could he clarify "lawsuit"?

15 MR. SLOAN: I am asking him who else he talked
16 to in connection with the facts stated in this affidavit.

17 MR. NORTMAN: I object on the grounds of
18 relevancy.

19 THE COURT: Overruled.

20 If you can tell us who you talked to at the
21 Commission, elsewhere.

22 Is that what you want to know?

23 MR. SLOAN: Yes.

24 THE COURT: Tell him.

25 A Three representatives of the Commission sitting

1 rkmch

Spindler-direct

49

2 here. Mr. Dolan in the back of the room.

3 Probably seven or either other people, employees
4 of the Commission. At some time the case may have been
5 mentioned.

6 Q How about people outside of the Commission?

7 A Not in any detail.

8 Q Who did you speak to?

9 A I spoke to my wife.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

139

1 rkh 1

Spindler-direct

2 Q Did you speak to the National Quotation Bureau?

3 A Yes, I guess I did. I am in contact with them
4 almost every day and since the submission of some 300
5 applications is not an unusual circumstance, we had many
6 conversations about it.

7 Q Who did you speak to at the National Quotation
8 Bureau?

9 MR. NORTMAN: Your Honor, I must object.

10 THE COURT: Sustained.

11 MR. SLOAN: Your Honor, again Mr. Spindler has
12 signed an affidavit in which he refers to information
13 received from the National Quotation Bureau and I am trying--

14 THE COURT: What paragraph do you refer to?

15 MR. SLOAN: Paragraph 3 of his affidavit. He refers
16 to information received from the NQB.

17 MR. NORTMAN: Your Honor, is there anything in this
18 affidavit that Mr. Sloan contests or is he just simply trying
19 to try the other case before Judge Griesa and getting an
20 extra bite at the apple?

21 THE COURT: I would suggest I have ruled on the
22 objection and under the circumstances and in view of the prior
23 answers of the witness, I am going to stand on that ruling.

24 Next question.

25 MR. SLOAN: Am I to take it that I cannot question

1 rk 2

Spindler-direct

2 Mr. Spindler about the information he received from the
3 NQB.

4 THE COURT: You can question him but anything
5 in that affidavit.

6 MR. SLOAN: He says he received information
7 from the NQB. I am asking him what information he received
8 from the NQB.

9 THE COURT: That is a different question, I
10 will allow it.

11 Q What information did you receive from the NQB?

12 A The information about some 300 applications of
13 yours. A list of those applications of the securities on
14 those publications that were published. There may have been
15 additional information. If you are willing to refer to
16 it specifically, I could tell you if it came from the NQB.

17 Q Did you have conversations in which the NQB
18 gave you information?

19 MR. NORTMAN: Objection. Asked and answered.

20 MR. SLOAN: That is not an objection, your Honor.

21 THE COURT: Overruled.

22 A Could you repeat it.

23 THE COURT: Repeat your question.

24 Q What conversations did you have with the NQB in
25 which you received information?

2 A I speak to certain employees of the NQB on
3 almost a daily basis.

4 Q What are their names?

5 A Dominick De Porto, Barry Long, Joanne Chapagrossio.

6 Q Did you speak to Dave Burnett?

7 A I did not.

8 Q Did you speak to these individuals in connection
9 with my listing applications?

10 A I believe I spoke to three of those individuals
11 with regard to your listing applications.

12 Q When did you speak with them?

13 A I speak to them on a daily basis. It could have
14 been at any relevant time during the time you were filing
15 those applications.

16 Q What did you say to them and what did they say to
17 you?

18 A I have difficulty answering that question. If
19 you could be specific about certain topics that we may have
20 discussed, I could answer it but as I say, I speak to them
21 on a daily basis.

22 Q What did you say to them and what did they say
23 to you with regard to my listing applications?

24 THE COURT: Sustained. That is hearsay.

25 MR. SLOAN: They brought it into the case. They

1 rkh 4

Spindler-direct

2 opened it up.

3 THE COURT: Well, I will not permit it to continue.

4 Next question.

5 Q Mr. Spindler, when you call a broker who has
6 submitted a Form 211, what do you say to him?

7 MR. NORTMAN: Objection.

8 THE COURT: Sustained.

9 Q When you call a broker which has submitted a Form
10 211 and you believe or the Commission believes there may be
11 a violation of the quotation as published, what do you say to
12 them?

13 MR. NORTMAN: Objection.

14 THE COURT: Sustained.

15 MR. SLOAN: Your Honor, I have no further questions.

16 MR. NORTMAN: Your Honor, we have no cross-
17 examination.

18 THE COURT: You may step down, Mr. Spindler.

19 (Witness excused)

20 THE COURT: You indicated to the court you were going
21 to call one witness this afternoon and the court set aside
22 time for the calling of such witness.

23 MR. SLOAN: I don't believe I ever indicated to
24 the court I intended to call one witness.

25 THE COURT: Do you wish to call more witnesses?

1 rkh 5

2 MR. SLOAN: Yes.

3 THE COURT: Who?

4 MR. SLOAN: Mr. Selvers.

5 MR. NORTMAN: Your Honor, I must object on two
6 bases. One, at this point there is absolutely no fact
7 in dispute. This circuit clearly recognizes that the court
8 has the authority to enter an injunction on a record such
9 as this. I refer specifically, your Honor, to SEC v. Frank
10 338 Fed. 2d, 486 Second Circuit 1968 in which it is clearly
11 stated, I am sorry I don't have the specific page reference,
12 that where there are no facts in dispute, it is not necessary
13 to have an evidentiary hearing. The case is often cited
14 against the Commission that we are not entitled to a
15 preliminary injunction simply on the basis of our affidavit
16 where there are conflicting versions in sworn affidavits.
17 Here we have nothing before us. We have now given Mr. Sloan
18 time to cross-examine the Commission's affiant. He has done
19 nothing to impugn or impeach his credibility. I submit at
20 this point to now subject Mr. Selvers who is the attorney
21 representing the Securities Exchange Commission would be
22 irrelevant, improper and would add nothing to this case
23 except waste the court's time and everybody else's time.

24 THE COURT: I would suggest it is a most in-
25 appropriate thing to have trial counsel called as a witness

1 rkh 6

2 and in view of the fact that Mr. Sloan did not indicate
3 when Mr. Selvers stood up earlier to present the Commission's
4 case and sat at counsel table that he had any intention
5 of calling counsel, I think the objection here is well taken.

6 MR. SLOAN: Your Honor, again I point out that
7 Mr. Selvers himself has signed an affidavit which --

8 THE COURT: I have ruled relative to your calling
9 of Mr. Selvers who is trial counsel in this matter.

10 MR. SLOAN: Your Honor, I must object strenuously.
11 There is an affidavit which Mr. Selvers signed which he has
12 presented to this court. Again, we can't cross-examine an
13 affidavit. The only way that --

14 THE COURT: That we can deal with when, as and if
15 we get to a contempt hearing, Mr. Sloan, because I am looking
16 over the substance of that and that would seem to be the
17 basis for a contempt citation and if the Commission moves
18 for one, I will tell you now that I will give you the
19 opportunity if Mr. Selvers' statements here constitute
20 any part of their case, to examine him.

21 Call your next witness.

22 MR. SLOAN: Am I to understand statements made
23 by Mr. Selvers constitute no part of their case?

24 THE COURT: They don't constitute any part of their
25 case so far as the actual application for a preliminary

1 rkh7

2 injunction. That affidavit as I understand it was submitted
3 in support of an application to Judge Griesa who was un-
4 familiar with this case to extend the temporary restraining
5 order.

6 Was that the thrust of the affidavit, Mr. Nortman?

7 MR. NORTMAN: Yes, your Honor.

8 MR. SLOAN: Nevertheless, I would submit
9 particularly since this court has stated that since Mr.
10 Selvers is an officer of the court that the court will accept
11 his representations and will not accept mine and this is
12 one of the particular grounds where I feel I am being
13 subjected to prejudice because if Mr. Selvers can get up here
14 and make a statement which I am prepared to show is untrue,
15 there is no way I can bring it out unless I have his testi-
16 mony under oath and on cross-examination.

17 THE COURT: I don't regard any of Mr. Selvers'
18 statements here being available for any purpose other than
19 in support of a possible application to have you held in
20 contempt for a violation of my temporary restraining order.

21 Call your next witness.

22 MR. SLOAN: The next witness I wish to call is Mr.
23 Thomas Dolan.

24 Your Honor, in view of an office record discussion,
25 I have changed my mind and decided not to call Mr. Dolan to

1 rk8

2 testify.

3 THE COURT: Very well, Mr. Dolan, you are excused.

4 THE COURT: I would suggest gentlemen, that we do
5 this. I think Mr. Sloan is entitled to open this application
6 for a preliminary injunction. I would propose that Mr.
7 Sloan take the stand, testify and tell his story and not
8 be subjected to cross-examination. I am prepared to hear
9 him as he wishes to tell his story in the same manner as if
10 he submitted an affidavit in opposition to your motion
11 and since an affidavit cannot be cross-examined, I would
12 suggest at this juncture that I would not have cross-
13 examination from you of him. If that is agreeable, fine.
14 If not, if you stand on the right that you have to cross-
15 examine any witness on the stand, of course that will change
16 matters.

17 Mr. Nortman?

18 MR. NORTMAN: Your Honor, I would concur in
19 your suggestion if we could reserve the right to call Mr.
20 Sloan perhaps as our witness.

21 THE COURT: At some subsequent time.

22 MR. NORTMAN: Yes.

23 THE COURT: Mr. Sloan may be concerned, I don't know
24 that he is or isn't, that he would be subjected to long
25 and lengthy cross-examination and what I am proposing really

1 rkh9

2 is to permit him to state on the stand if he wishes whatever
3 he would state in an affidavit in opposition to this
4 motion for a preliminary injunction permitting him to tell
5 his side of the story under oath just as he would in an
6 affidavit.

7 MR. NORTMAN: I think it is a very pragmatic
8 solution.

9 THE COURT: Mr. Sloan, the court invites you if
10 you wish to be placed under oath and to take the stand
11 and tell me anything that you would tell me in an affidavit.

12 If you choose not to, I will respect you for it.
13 I will not call you as a witness. That is an invitation
14 and not a direction.

15 MR. SLOAN: I do wish to testify. I would state
16 that it is my position that the court cannot grant a pre-
17 liminary injunction without a full evidentiary hearing
18 and since this is my position, I can't very well object
19 to the Commission cross-examining me, but on the other
20 hand, in order to consistent, I can understand the reason
21 that the court stated what it did.

22 So I will testify and if I do not prevail this
23 afternoon, in all probability I will appeal and the grounds
24 I am going to raise is that the court cannot grant an
25 injunction without a full evidentiary hearing.

1 rkh 10

2 THE COURT: I would suggest that I have afforded
3 you every latitude except that relative to your calling
4 trial counsel Mr. Selvers. I have indicated that I
5 consider that his affidavit would go to contempt rather
6 than to the motion for a preliminary injunction.

7 You may proceed.

8 MR. NORTMAN: Your Honor, may I make a request
9 of the court before Mr. Sloan starts testifying, that is,
10 that he be warned of his privileges under the Fifth Amendment
11 to the Constitution.

12 THE COURT: I will state two things, three things,
13 Mr. Sloan. A person who makes statements under oath
14 voluntarily waives his Fifth Amendment privilege against
15 self-incrimination.

16 A person who testifies under oath in a court
17 of the United States, if those statements are not true,
18 subjects himself to the possibility of criminal indictment
19 and of course also under certain circumstances, might
20 subject himself to penalties for contempt.

21 I would expect that your testimony would be
22 truthful in every respect which would at least eliminate
23 one of the problems to which I have adverted, but I think
24 it only fair to indicate to you that when you take the stand
25 in this proceeding, there is also the possibility that

1 rkh 11

2 your testimony could be used against you at some later
3 date.

4 With that in mind, I invite you but as I say,
5 I do not direct you to testify.

6

7 S A M U E L H. S L O A N, called as a witness, having
8 been duly sworn, testified as follows:

9 THE COURT: You may proceed, Mr. Sloan.

10 THE WITNESS: Your Honor, I am a broker-dealer
11 registered with the Securities and Exchange Commission. I am
12 in a rather unusual position with respect to the Securities
13 Exchange Commission because I filed a request to withdraw
14 as a broker-dealer on August 16, 1973. When that particular
15 request --

16 THE COURT: If you are reading from something,
17 Mr. Sloan, we can put that into evidence directly. I
18 don't mind if you want to put something into evidence. I
19 will take it. It is really an unnecessary duplication if
20 you are going to sit and read from this material so I give
21 you two choices. You can put any and all material you have
22 into evidence or you can tell your story in your own words.

23 THE WITNESS: I am not reading from anything. These
24 are just papers, affidavits that the Commission has submitted.

25 THE COURT: If you have nothing you need refer to,

1 rkh 12

2 just proceed and tell your story.

3 THE WITNESS: Yes, your Honor.

4 I filed a withdrawal request in August of 1973.
5 Then I filed a subsequent withdrawal request I think about
6 30 days later. In any event, the Commission has not
7 permitted me to withdraw as a broker-dealer from that date
8 forward so at this point, I am actually being forced to
9 continue as a securities dealer against my will. The reason
10 that the Commission has stated for not permitting me to
11 withdraw as a broker-dealer is because they have an ad-
12 ministrative proceeding before, which is pending before
13 the Securities Exchange Commission and this particular
14 proceeding, the original petition I believe was called, was
15 filed in August of 1972, a hearing was held in October
16 and November of 1972. There was an initial decision by the
17 administrative law judge which barred me from association
18 with any securities dealer but that initial decision is on review
19 to the Commission itself. Final briefs were filed in
20 July of 1973 and it is now January, 1974, and the Commission
21 has not rendered a determination of this administrative
22 proceeding and as a result, I have no choice but to continue
23 as a broker-dealer. However, I have decided in view of the
24 situation that the Commission has forced me to stay as a
25 broker-dealer, I am put in a position where I almost have to

1 rkh 13

2 violate certain of its rules.

3 For example, the Commission requires filing
4 financial statements and it also requires that I maintain
5 books and records and in this case my books and records
6 would consist of the light bill, the gas bill, the electricity
7 bill, any income I might receive from other sources, cash
8 receipts, disbursements which I would have nothing to do
9 with my securities business because as the Commission is
10 well aware, from August of 1973 until very recently I have
11 not engaged in any activities in the securities business.
12 The first day I think I actually was in a position to submit
13 quotations to the pink sheets was in December of 1974;
14 so there is a period of a little over a year where I didn't
15 do anything in the area of the securities business. Never-
16 theless the Commission would require that I maintain
17 personal records, all kinds of records, bills outstanding,
18 this kind of thing that I have to keep in accordance with
19 Rule 17A4 and I believe this is unconstitutional because if
20 every person were required to keep these kind of records,
21 we wouldn't have a free society, we would have a situation
22 where the government could walk into anybody's office or
23 airport or whatever and look at their checkbook and look
24 at any other financial transactions they might be engaged
25 in and we wouldn't have any more of a free society. The

1 rkh 14

2 reason the Commission can do this, because I registered
3 as a broker-dealer and they feel they can continue to
4 exercise these particular requirements.

5 I have not submitted any financial statements
6 to the SEC since the most recent statement was dated
7 December of '72. I have not paid any civic assessment
8 which is a fee that the brokers must pay to the Securities
9 Investor Protection Association on an annual basis. Again
10 the reason I haven't paid any fees, I haven't engaged in
11 any securities business but of course the SEC takes the
12 position that these fees must be paid and the informants
13 filed so on and so forth and I am sort of waiting for the
14 Commission to proceed against me at some point because this
15 is the only way I am going to have this matter adjudicated.
16 I am saying here I am, if you want to do something to me,
17 I am available.

18 With regard to the submission of the Form 211,
19 on July of '74 I commenced an action called the SEC v.
20 Sloan and I believe in October, '74. I filed an amended
21 complaint which joined the National Quotation Bureau, the National
22 National Association of Securities Dealers, the National
23 Clearing Corporation, Disclosure, Inc. and Bunker-Ramo
24 Corporation and this action seeks declaratory relief
25 declaring the Securities Exchange Act of 1934 and Sections

1 rkh 15

2 17A5 and Sections 15C2 to be unconstitutional as well
3 as Section 17A, Rule 17A3 and 4 and Rule 15C2-11 to be
4 unconstitutional.

5 The original thrust of my complaint was directed
6 solely at Rule 15C2-11 because my contention is that
7 the effect of Rule 15C2-11 is to deprive members of the
8 public from the opportunity to buy and sell stocks in
9 a normal manner and I further contend that these rules
10 are actually a fund raising device by the Securities Ex-
11 change Commission.

12 Now, the way that that works, the SEC routinely
13 suspends trading in all securities which have not filed
14 financial statements in accordance with the rules of the
15 Securities Exchange Commission and the securities, the
16 companies required to file these rules, these statements are
17 in general companies registered under Section 12G of the Act.
18 So each company registers under Section 12G of the Securities
19 Exchange Act of 1934 must file a financial statement.
20 Registration under the section is mandatory. There is no
21 possibility -- the company cannot exercise discretion
22 if a company has more than 500 shareholders and a million
23 dollars in assets. It must register as a 12G company
24 and once registered, it must continue as a 12G company unless
25 the Commission grants it leave to discontinue as a 12G

1 rkhl6

2 company so that has happened in effect, the companies have
3 lost a lot of money and their assets have gone down, the
4 number of shareholders dwindled but nonetheless they must
5 file reports.

6 I believe it is Section 12B-7, I have it in
7 my notes but I am speaking from memory, which requires
8 that each 12G company pay a fee of \$250 per year to the
9 Securities Exchange Commission. In addition, Rule 17A6
10 promulgated under the Securities Exchange Act requires
11 that every company pay a proxy fee. Any time they submit
12 a shareholders' statement of a company and the fee can vary
13 from \$125 in case there is no contest as to what the issues--
14 the proxy statement for example, reelection of a board of
15 directors which is already in power or it can be \$500 there
16 is some sort of contest or it is a thousand dollars in the
17 event it is a tender or a merger.

18 I have been to the Securities Exchange Commission.
19 There are 10,000 12G companies. I believe the number is
20 actually 9,996. Each of these companies are required to pay
21 a \$250 filing fee. In addition to that, they must pay
22 a proxy fee which would appear to be an average of \$500
23 per company. I haven't seen the actual figures on it but
24 it appears that the Securities Exchange Commission collects
25 approximately \$5,000,000, or in excess of \$5,000,000 in

1 rkh 17

2 revenues by virtue of the workings of their regulatory
3 scheme as they call it. What I am doing, I am coming into
4 the court because the Securities Exchange Commission has
5 suspended trading in approximately 400 securities during the
6 past two years. In almost all cases, this is for violations
7 of failure to file a financial statement and when they fail
8 to file financial statements, it also means that they fail
9 to pay their \$250.

10 I submitted a listing application in the form
11 of Form 211 on every security which had been suspended
12 by the Security Exchange Commission for the past two years
13 with the exception of those securities which are either
14 listed on the New York Stock Exchange, on the American Stock
15 Exchange or which I was able to determine were already in the
16 pink sheets and there were a few securities which did not
17 even -- which never traded. The one I can remember offhand
18 is a company called Dumont Corporation of Fort Lee, New
19 Jersey. They appeared never to have traded but the SEC
20 suspended trading in this company. I determined it never
21 traded because of the fact it was not listed in the National
22 Stock Summary and apparently never been listed in the pink
23 sheets and no address was listed for it and I assumed it
24 was one of these companies which became a 12G company
25 at one time in the hope it would ultimately be publicly traded

1 rkh 18

2 and just never filed its reports so the SEC suspended
3 trading.

4 It turns out I submitted as far as I know 373
5 listing applications and with a few exceptions, these were
6 all companies that had been previously suspended from trading
7 by the Securities Exchange Commission.

8 I did not submit a listing application for American
9 Telephone & Telegraph which was suspended from trading by
10 the SEC. I think it is release number S1111. I believe
11 American Telephone was suspended from trading for one hour
12 in late November of 1974. My contention is that the section,
13 I believe it is Section 12B5, the two sections which regard
14 the suspension of trading, my contention is these sections
15 are unconstitutional but the only way to bring this matter
16 before the court is to actually submit listing applications
17 as I did. There isn't any other procedure.

18 I would like to point out as I did in my writ of
19 petition for mandamus, in the case of PBW Stock Exchange
20 v. SEC, there was a statement by the court that the proper
21 way to challenge an SEC rule is to violate the rule then
22 permit the Securities and Exchange Commission to institute
23 proceedings. I am not prepared to concede I violated a
24 Rule 15C2-11 because as I read the rule, it is so vague
25 that it is impossible for me to determine whether there is

1 rkh19

2 a violation.

3 In particular, Rule 15C2-11 relates to the submission
4 of quotations. Now, the position of the Securities Exchange
5 Commission as I understand it from speaking to Ira Spindler
6 and others, is that a quotation means an actual bid and
7 asked price which is published in the pink sheets.

8 I wish to offer in evidence a copy of a no action
9 letter.

10 THE COURT: That will be Defendant's Exhibit A,
11 marked for identification.

12 Any objection?

13 MR. NORTMAN: No.

14 THE COURT: It is received.

15 (Defendant's Exhibit A received in evidence.)

16 THE WITNESS: Defendant's Exhibit A --

17 THE COURT: It is in evidence.

18 THE WITNESS: My interpretation of this no action
19 letter is that a broker is not in violation of Rule 15C2-11
20 provided that he does not submit any price quotations. Now,
21 in the case at hand, what I have done is spoke to the
22 National Quotation Bureau on a number of occasions attempting
23 to list securities in name only as the SEC calls it. In
24 other words, without submitting a bid or an asked quotation.

25 At a meeting with Mr. Dave Burnett, I believe it

1 rkh 20

2 was on December 17, 1974, it was either one or two days
3 before Ira Spindler called me. During this conversation with
4 Mr. Burnett, Mr. Burnett is aware of the fact that I claimed
5 these rules to be unconstitutional because National
6 Quotation Bureau is a defendant and as a matter of fact
7 since I have been a subscriber off and on to the NQR since
8 1970, they are familiar with my market making activities.
9 I had a meeting with Mr. Burnett and he told me that the
10 Quotation Bureau would not permit me to publish initial
11 listings in name only; that they were going to require that
12 I submit a price for quotations. The reason for this being,
13 when a broker does not submit a price quotation, the SEC
14 does not call him to notify him he might be in violation.
15 The SEC will permit a broker to submit a card into the
16 pink sheets without a price quotation. However, this is
17 detrimental to the interests of the National Quotation Bureau
18 because the Quotation Bureau publishes a book called the
19 National Stock Summary and this National Stock Summary
20 which is published every six months is a compilation of bid
21 and asked prices. Essentially what it does, it goes through
22 the last six months and takes the most recent quotations
23 submitted by any broker. In other words, if a broker
24 submitted a quotation every day for the last six months,
25 they would take the last one. If a broker submitted only one

1 rkh 21

2 quotation, they would put that one in.

3 In order for the National Quotation Bureau to
4 compile a National Stock Summary it must have quotations.
5 Because of the workings of 15C2-11, many brokers are not
6 willing to be subject to the liability which it appears
7 to incur by virtue of the fact it publishes quotations
8 published in the pink sheets. Most brokers would prefer
9 to publish no quotations. In my personal case, it has been
10 my policy during all the time since Rule 15C2-11 not to
11 publish bid and asked quotations in the pink sheets.

12 As a matter of fact, there was a statement made
13 by the SEC in its request for a permanent injunction in
14 the previous case in which it stated I submitted bid and
15 asked quotations into the pink sheets in 1972 but as far
16 as I could determine, I did not submit any bid and asked
17 quotations during that period and I believe the statement
18 made by the Commission and the findings of fact by the court
19 in that particular instance were clearly erroneous and there was
20 no showing I did submit price quotations.

21 In the case of Triex International, which I spoke
22 to Mr. Burnett, I explained to him I had a short position
23 in Triex International, I had been short since 1972 and
24 the only way to cover my short was to go into the pink sheets.
25 I told him I did not wish to submit any price quotation in

rkh 22

this particular security.

Mr. Burnett and I worked out an agreement. The agreement was that he would accept a Form 211 from me with a quotation on it but that when it came time to publish this quotation in the pink sheets, the National Quotation Bureau would not require me to submit an actual price. In this particular case, although on December 18, 1974, the Commission may have received a Form 211, the fact is when the time came for the quotation actually to be published in the pink sheets, if one were to examine the pink sheets in which I know this has not been offered in evidence here, one would see that there was no quotation on the date in question or Triex International Corporation. The only quotation on that day was Franklin New York Corporation and the price was 2 bid and I wish to point out in the case of Franklin New York Corporation, the company is in bankruptcy. It is being liquidated by the FDIC. There is a case pending here in this district before Judge Consal entitled SEC v. Franklin New York Corporation. There is also papers filed in liquidation proceedings. All these papers are available to the public. Anybody can Xerox them and look at them and I would submit although Franklin New York Corporation has not paid its 250 filing fee to the SEC, there is no reason why the SEC should prohibit a company

1 rkh 23

2 trading simply because it is in bankruptcy and cannot afford
3 to pay a CPA to prepare certified financial statements
4 of the condition it is in.

5 I was speaking today to brokers who went into the
6 pink sheets subsequent to my listing because the monthly
7 situation of the Quotation Bureau is, once an initial
8 listing is accepted into the pink sheets, other brokers
9 can come in and submit their own listings without submitting
10 a Form 211. As a result, for example, the first day that
11 I appeared in Franklin New York Corporation, two other brokers
12 appeared with me in the same security and these brokers
13 were Dopler & Company and Oppenheimer & Company. As far
14 as I know the SEC has not brought any proceeding against
15 either Dopler & Company or Oppenheimer & Company for
16 violation of Rule 15C2-11. They have singled me out for
17 violation of this rule even though as I say, the other
18 brokers had done exactly the same thing I did. The reason
19 why they singled me out, I submitted listing applications
20 for approximately somewhere in excess of 300 different
21 securities whereas Oppenheimer & Company and Dopler did not
22 submit any listing applications but they went into the
23 pink sheets anyway. In fact I would say that I have complied,
24 done more to comply with the rule than these other brokers.

25 Another case, a stock called Continental Dynamics.

1 rkh24

2 Shortly after my name appeared in the pink sheets, three
3 other brokers had their name in the pink sheets. One
4 was E.L. Aron, one was J.W. Weller and the other was Morton
5 Kaminsky. I spoke to traders at all three of these firms
6 this afternoon and they informed me that after they made
7 their listing and apparently after you signed a temporary
8 restraining order, they received calls from the Securities
9 Exchange Commission asking them questions about what kind
10 of financial information they had available and asking them
11 to discontinue trading in this particular security.

12 My examination of the pink sheets indicates that
13 these brokers did not violate Rule 15C2-11 because they did
14 not submit price quotations. They submitted their name.
15 Their name appeared in the pink sheets with name only.
16 Nevertheless the trader at J.W. Weller informed me that
17 he was required, the SEC required that both him and the
18 principal of J.W. Weller & Company go to Washington. He
19 said it was Monday of last week and give testimony. They
20 offered to give testimony here in New York but they were
21 required to go to Washington at their own expense and answer
22 questions concerning my listing and their listing in the
23 pink sheets under Continental Dynamics and they told me the
24 SEC had advised them they were in effect out to get me
25 but since the SEC was having a hard time getting Sloan, they

1 rk25

2 were going to go after J.W. Weller instead and I submit
3 this is harassment and it is rather unfortunate I think that
4 another broker who didn't have the slightest idea what
5 was going on between me and the Commission would suddenly
6 be placed in a position where he would have to be called
7 down to Washington and possibly subjected to a future pro-
8 ceeding or be frightened into believing that there might
9 be some future proceeding simply because I am making an effort
10 to challenge the question of whether this rule is proper.

11 Now in looking at Rule 15C2-11 and comparing it
12 to Section 15C2 on which it is based, one sees there is very
13 little similarity. 15C2 requires, states that the SEC
14 shall define what constitutes a fictitious quotation or
15 manipulative price. However, Section 15C2 does not define
16 a fictitious quotation. Instead, Section 15C2 sets forth
17 what must be done in a variety of circumstances.

18 Now, Section 15C2 is so vague that it is impossible
19 for a broker to determine whether he is in violation of this
20 rule. For example, the rule says that the broker shall not
21 submit a quotation unless the security has been quoted in
22 12 of the last 30 days; I believe is the language of the
23 rule. However, the National Quotation Bureau does not require
24 Form 211 unless the security has never been in the pink
25 sheets before, so it is quite possible that a broker can go

1 rkh26

2 into the pink sheets and submit a quotation, an actual
3 price bid and asked quotation in the securities that has
4 been listed in the pink sheets continuously but for various
5 reasons the brokers have not published a price and when this
6 broker comes in and publishes a price, he may be in violation
7 of the rule.

8 There was a case where the SEC started
9 an administrative proceeding against Robert M. Cainy and
10 somebody else, two brokers who had gone into the pink sheets
11 apparently as a result of an error by the National Quotation
12 Bureau which they permitted -- they took a listing card
13 from a broker and published a price although the security
14 had just been suspended by the Securities Exchange Commission
15 and this was due to an error by the Quotation Bureau.

16 I have done the same thing myself many times,
17 submitted cards to the National Quotation Bureau in
18 securities suspended and I have submitted these cards by
19 mistake. Frequently I don't even see them. When I was
20 operating a regular business, I would have a clerk or a
21 secretary just submit approximately 100 cards every day
22 and I never looked at them to see whether they were submitted
23 properly or not. There have been cases in which the
24 Quotation Bureau will publish me under one security where
25 they intended -- sometimes there is a typing mistake --

2 MR. NORTMAN: Your Honor, may I interrupt for
3 one second. I understand the ground rules so to speak that
4 we are operating under for the purpose of Mr. Sloan's state-
5 ment but if we are going to analogize Mr. Sloan to a living
6 affidavit, if you will, I am at a disadvantage because
7 frankly if I had an affidavit like this in writing, I would
8 not choose to read it at all.

9 THE COURT: I trust that Mr. Sloan will be finished
10 shortly with his presentation.

11 Go ahead.

12 THE WITNESS: Your Honor, this is a rather involved
13 thing here. This is part of the Commission's regulatory
14 scheme.

15 THE COURT: Would you like to have the opportunity
16 to submit further papers on this matter?

17 MR. SLOAN: Your Honor, I am not going to put myself
18 in a position where the court further extends the temporary
19 restraining order. As you know I am objecting to each of
20 these -- I believe the court is quite prejudiced with respect
21 to signing the original order and you already indicated
22 if I wanted time to submit papers, that you would extend
23 the temporary restraining order and I think that would be
24 unfair and I am not prepared to put myself in a position
25 where that occurs.

1 rkh28

2 THE COURT: You finish your presentation and then
3 since you request that the court rule promptly, the court
4 will rule.

5 THE WITNESS: Again I would say the court cannot
6 rule without making findings of fact.

7 THE COURT: I intend to. You have given me sufficient
8 so I can make findings of fact based on the record this afternoon
9 and I intend to do so.

10 You may proceed, sir, and I trust you will not
11 digress from the germane issues. Try to complete your pre-
12 sentation within the next five to ten minutes.

13 THE WITNESS: Your Honor, the other thing that I
14 want to explain is, one of the effects that this rule has
15 had is to keep these securities out of the pink sheets for
16 a period of as much as two years because Rule 15C2-11 came
17 into effect I believe on December 13, 1972. It is almost
18 a period of exactly two years.

19 At the end of the year, I listed these securities
20 also in part because of income tax selling. At the end of the
21 year people sell securities for the purpose of taking
22 a tax write-off. They can offset their losses against their
23 profits. As a result, the court made a statement in a
24 request for a temporary restraining order there might be
25 something to stop my securities activity altogether. The

1 rkh29

2 reason that people would sell at 1 a share is in order
3 to take a tax loss. Now, the New York State Tax Commission
4 requires payment of a cent and a quarter tax so if I buy
5 100 shares of stock from Merrill Lynch at the price of 1 cent,
6 the Merrill Lynch must pay and the customer must pay to the
7 New York State Tax Commission, a cent and a quarter. In effect
8 what is happening, the customer has to make up the difference
9 plus pay it. The customer sells the security which under
10 normal circumstances he would receive money for and it turns
11 out he has given money to the broker. The reason people do
12 this is because they want to take a tax loss at the end
13 of the year. They are more than willing to pay five or ten
14 dollars to their broker. The reason I am pointing this out
15 is because the Commission has taken the position that I am
16 engaged in some sort of unscrupulous scheme where I am trying
17 to take advantage of the public. What I am actually doing
18 and what I did, by submitting these quotations on the last
19 two or three days of the year was that I was giving these
20 people the opportunity to sell their stocks and to take
21 a tax loss which they would not have been able to take if
22 I hadn't done this and therefore I would submit I am
23 performing a public service and when the SEC comes in and
24 says they are trying to protect the public, actually what
25 they are doing is trying to keep the public from deriving

1 rk30

2 the revenues that it would receive by writing these
3 securities off their income tax, so we have a question of
4 federal income tax law that is involved here and it is not
5 that people don't sell their stocks for the reasons usually
6 given.

7 THE COURT: Thank you, Mr. Sloan.

8 I will now hear anything either of you wish to say
9 in closing.

10 THE WITNESS: Your Honor, there is one other thing.

11 Since the Securities and Exchange Commission
12 obtained the temporary restraining order, my understanding
13 is the SEC communicated with the National Quotation Bureau.
14 I wanted to bring this out by the testimony of Mr. Selvers.
15 In any event, the position of the Quotation Bureau has been
16 that they will not permit me to list any securities in the
17 pink sheets. I spoke to Mr. George Brand who is the
18 original attorney assigned to my case. He worked for the SEC
19 in 1971 and when the SEC brought their original complaint
20 against me, he was the attorney and Mr. Selvers actually
21 the successor to Mr. Brand. Mr. Brand works for Rogers &
22 Wells that represents the NQB. Mr. Selvers told me because
23 of the broad language of 15C2-11, it is impossible for the
24 NQB to determine whether a broker is in compliance with this
25 rule or not and since the SEC had threatened to bring

1 rkh31

2 injunctive action against the Quotation Bureau if they accepted
3 any listing from me, the Quotation Bureau was going to take
4 the position it would not accept any listings. My inquiry
5 to Mr. Brand was that since any listings that I would make
6 would not contain a bid or asked quotation, but would simply
7 list the securities in name only, how could this be a violation
8 of Rule 15C2-11. Mr. Brand advised me although the Commission
9 had previously stated in the form of a no action letter
10 that a quotation must include an actual bid and asked price,
11 the National Quotation Bureau was taking the conservative
12 approach by deciding that a quotation could mean anything,
13 even a card submitted without an actual price on it. At that
14 point the National Quotation Bureau was going to refuse to
15 accept any listing at all even in securities which were clearly
16 not in violation of Rule 15C-211 such as substantial securities
17 which are well known companies.

18 Therefore, I am trying to bring this out because
19 if the court signs an injunction in the form which the
20 Commission has presented and in the form of a temporary
21 restraining order, what is going to happen is, the National
22 Quotation Bureau will not permit me, as I understand it,
23 to list any securities in the pink sheets at any time in
24 the future. As a matter of fact, I made a motion before
25 Judge Griesa to enjoin them from keeping me out of the pink

1 rkh32

2 sheets. I intended to call Mr. Dave Burnett of the National
3 Quotation Bureau here but I thought that in order to present
4 their case, the SEC would have to call Mr. Burnett and that
5 is the reason why I didn't subpoena him and have him here
6 to testify. The fact of the matter is, if this court signs
7 an injunction in the form that the SEC has presented, this
8 will in effect terminate my ability to list any securities
9 in the pink sheets and will stop any market making activities
10 I might have and this is solely because of the vague
11 language of the rule.

12 THE COURT: Thank you, Mr. Sloan.

13 Is there anything that anyone wishes to say before
14 I close this hearing?

15 Mr. Nortman?

16 MR. NORTMAN: Your Honor, based on the statement
17 made by Mr. Sloan, we do not believe there is anything of
18 any substance which would militate one jot against against
19 the granting of the relief that the Commission asked.

20 THE COURT: Do you want to make a closing statement?

21 MR. SLOAN: Again I objected in the past that this
22 court doesn't want to seem to consider the arguments I am
23 making that this rule is an improper exercise on the
24 Commission's authority and once again I ask that the
25 Commissioner consider this argument so I can make it on

2 appeal. When I made a motion to the U.S. Court of Appeals
3 Judge Gurfein expressed some surprise over the fact there
4 is a constitutional issue involved in this case. He read
5 the issues and saw nothing about a constitutional issue.
6 I feel that this court -- I would at least ask that in
7 view of my past experience, I expect to lose today but I
8 would at least ask that the court consider the arguments I
9 have advanced as part of its determination and I feel that
10 clearly if you read Rule 15C2 and compare it with Rule
11 15C2-11, I don't think that any impartial observer could
12 come to the conclusion that Rule 15C2-11 is a proper
13 exercise of the Commission's rule making authority.

14 THE COURT: Thank you.

15 Mr. Sloan, you indicate to the court that you do
16 not wish the decision to be a hasty one and yet when you were
17 on the stand you indicated that you would not consent to
18 the extension of a temporary restraining order beyond today.
19 Is that still your position?

20 MR. SLOAN: Your Honor, the reason why I have
21 taken the position I have --

22 THE COURT: Just answer the question.

23 MR. SLOAN: Yes, your Honor.

24 THE COURT: The court is prepared to render a
25 decision: The court having held a hearing on the plaintiff's

1 rkh 34

2 motion for a preliminary injunction on January 17, 1975,
3 at which the court considered the moving papers of the
4 plaintiff including the affidavits of Thomas F. Dolan
5 and Ira B. Spindler of the Securities and Exchange Commission
6 and at which the court heard the testimony of Ira B. Spindler,
7 a financial analyst in the New York office of the Securities
8 Exchange Commission who testified that on December 18, 1974,
9 Samuel H. Sloan "Sloan" stated to him that he intended to
10 wilfully violate Rule 15C2-11, testimony which this court
11 credits, and the court also having heard the testimony of
12 Sloan who did not contest the factual allegations presented
13 by the Commission as set forth in the affidavits of Messrs.
14 Dolan and Spindler, the court finds that the defendants
15 will, unless restrained, continue to engage in acts and
16 practices which constitute violations of Sections 15C2
17 and 17A of the Securities Exchange Act of 1934 as amended.
18 15 USC 78QAA and Rules 15C2-11 and 17A-4 promulgated there
19 under 17CFR 250.15C2-11 and 250.17A and that immediate
20 and irreparable injury, loss and damage will result unless
21 a preliminary injunction is issued enjoining the defendants
22 from violating the bookkeeping provisions of the aforementioned
23 statutes and regulations and from instituting quotes in
24 over-the-counter securities and requiring the defendant to
25 give access to his books and records to duly authorized

representatives of the Commission so that they may examine these books and records as provided for in the foregoing statutes and regulations.

Sloan's only defense is that the foregoing statutes and regulations are so vague as to be unconstitutional.

The defendants have provided no legal arguments to support their contention. The court finds that plaintiff has presented a *prima facie* case that the statutes and regulations comport with the requirements of the Constitution.

See *Securities and Exchange Commission v Boren*, 286 F. 2d. 312, (2d Cir. 1960); *Securities and Exchange Commission v Broadwall Securities, Inc.*, 240 F. Supp. 962 (SDNY 1965).

Based upon the facts presented on the issue of non-compliance with the foregoing statutes and rules, the court is satisfied that the protection of the investing public requires the granting of the application for a preliminary injunction. See *Securities and Exchange Commission v. Culpepper*, 270 F. 2d 241, 249 (2d Cir. 1959).

Submit order in accordance with the foregoing decision.

MR. NORTMAN: Your honor, we have in our possession, we have handed up to the bench, an order of injunction. We were optimistic your Honor would so rule and we are glad

1 rkh36

2 to see our expectations have been fulfilled.

3 THE COURT: You have handed up to me an order of
4 injunction. I find that it comports with the decision which
5 has been rendered and I sign the dating January 17, 1975,
6 issued at 6 P.M.

7 I have just signed the preliminary injunction.
8 I direct counsel to hand a copy thereof to Mr. Sloan and
9 since the Clerk's office is closed, I direct the Clerk to
10 file this preliminary injunction on Monday.

11 The purpose for which court has convened, court
12 is adjourned.

13 MR. NORTMAN: Your Honor, may I just on the
14 record reflect that I am handing Mr. Sloan a carbon copy
15 as conformed to your Honor's directions to Mr. Sloan in
16 open court.

17 MR. SLOAN: Your Honor, this is not a conformed
18 copy, I would like to point out.

19 THE COURT: Let me see it.

20 (Pause)

21 I have just examined the copy of a preliminary
22 injunction which has been handed up to me by Mr. Nortman
23 and I would state that it is a conformed copy of the pre-
24 liminary injunction signed by the court except for the
25 attachments which are annexed, Mr. Nortman. The attachmen t

1 rk h37

2 to the injunction consists of seven pages. The attachment--
3 I am sorry, yours are printed on both sides. It also consists
4 of seven pages. I just noticed that. They are identical.

5 Mr. Mortman.

6 Would you now hand the conformed copy of the
7 order of injunction to Mr. Sloan.

8 MR. SLOAN: I wish to move under Rule 8A of the
9 Federal Rules of Complete Procedure in view of the fact
10 that I intend to appeal immediately from the decision of
11 this court, I ask that the injunction be stayed pending
12 appeal and I note that Rule 8A of the Federal Rules of
13 Complete Procedure states that an application for a stay
14 pending appeal must ordinarily be sought in the first
15 instance in the District Court and for that reason, I now
16 move for an order under this section for a stay pending
17 appeal.

18 THE COURT: Motion denied.

19 Anything else?

20 MR. SLOAN: I just wish to point out in connection
21 with a stay pending appeal, in its findings the court did
22 not incorporate any findings of fact and it did not reach
23 any conclusion to the effect that I used the mails or means
24 or instrumentalities of interstate commerce in connection
25 with my activities and this is one of the grounds for the

1 rkh38

2 appeal and I also wish to ask the court to reconsider its
3 decision based upon that.

4 THE COURT: To the extent it is not included by
5 implication, I expressly incorporate into my decision
6 a finding that you used the facilities of interstate
7 commerce and the telephones to conduct your business.

8 Is there anything else, Mr. Sloan?

9 MR. SLOAN: I would submit that the telephones
10 have never been held to be instrumentality of interstate
11 commerce.

12 THE COURT: Anything else, Mr. Nortman?

13 The purpose for which court having been convened,
14 is concluded, court is adjourned.

15

16 ---

17

18

19

20

21

22

23

24

25

WITNESS INDEX

88

Name _____

Direct Cross Redirect Recross

Ira B. Spindler

30

EXHIBIT INDEX

Defendant

Identification Evidence

Λ

(3)

Evidence

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

Official Court Reporters
U. S. District Courts

178

SEC V. SLOAN

STATE OF NEW YORK)
: SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 26 day of June , 1975 deponent served the within appendix upon SECURITIES & EXCHANGE COMMISSION

attorney(s) for ~~XXXXXX~~ APPELLEES

in this action, at 26 Federal Plaza, NYC

the address(es) designated by said attorney(s) for that purpose by depositing a true copy ~~copy~~ of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

.....
ROBERT BAILEY

Sworn to before me, this
26 day of June , 1975.

William Bailey
WILLIAM BAILEY

Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976